

# **Exhibit G**

Transcript of Detroit City Council Public  
Hearings on April 11, 2008

Committee of the Whole  
Legislative Hearings  
2 Woodward Avenue, 13th Floor  
Detroit, Michigan  
Friday, April 11, 2008  
9:14 a.m.

APR 22 2008

COPY

APPEARANCES:

DETROIT CITY COUNCIL  
MEMBERS:

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1 Detroit, Michigan

2 Friday, April 11, 2008 - 9:14 a.m.

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4 P R O C E E D I N G S

5 COUNCIL PRESIDENT COCKREL: Good  
6 morning.

7 MULTIPLE SPEAKERS: Good morning.

8 COUNCIL PRESIDENT COCKREL: Good  
9 morning, and welcome to this third and we hope final  
10 day of hearings relative to our investigative process  
11 in the case of Brown, Nelthrope, and Harris versus  
12 the City of Detroit.

13 Our first witness for today is going  
14 to be Frank Wu, Dean of the Wayne State University  
15 Law School. So, before we proceed, just to lay down  
16 the ground rules; the procedure that we are going to  
17 follow, we're going to be consistent with what we've  
18 been doing for the first few days of hearing. The  
19 witnesses will each be administered the oath, and  
20 then at that point, they'll be giving sworn testimony  
21 in response to questions that will initially be led  
22 and directed by Mr. Goodman -- special counsel  
23 retained by the City Council to represent our  
24 interests in this matter, and then once Attorney  
25 Goodman has completed his initial line of

1           questioning, we will go to questions from Council  
2           members.

3                       So, that being the case, the first  
4           order of business -- Dean Wu, welcome. I'd like to  
5           ask you to step over here and Ms. Monte, our court  
6           reporter, will administer the oath.

7                       MR. WU: And good morning.

8                       MULTIPLE SPEAKERS: Good morning.

9                       COURT REPORTER: Sir, do you solemnly  
10          swear or affirm to tell the truth, the whole truth,  
11          and nothing but the truth, so help you God?

12                      MR. WU: Yes, I do.

13                      COUNCIL PRESIDENT COCKREL: Mr.  
14          Goodman, the floor is yours.

15                      MR. GOODMAN: Thank you very much, Mr.  
16          President. Good morning, Dean Wu.

17                      THE WITNESS: And good morning to you.

18                      MR. GOODMAN: Thank you.

19                               FRANK WU

20          DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

21                               EXAMINATION

22          BY MR. GOODMAN:

23          Q        I guess, as they say, for the record would you please  
24                   state your full name?

25          A        Sure. Frank H. Wu, W-u. It's about as short as it

1 gets.

2 Q And you are, I think, as the President said,  
3 currently the dean of the Wayne State University Law  
4 School; is that correct?

5 A That's correct. I serve as dean at the law school,  
6 although, of course, I'm not appearing here as dean.

7 Q Right. Your background, qualifications are as an  
8 attorney; is that correct, sir?

9 A That's correct.

10 Q Just, by the way, how long have you been the dean at  
11 Wayne Law School?

12 A For four years now.

13 Q And you're also a professor of law there; is that  
14 correct?

15 A That's right.

16 Q And as I think the entire community knows, sadly you  
17 are leaving Detroit and returning to your home base,  
18 which is Washington, D.C.; is that correct?

19 A That's right. I'll be leaving this office in just  
20 one month.

21 Q And in Washington, that would be also continuing in  
22 your academic career as a professor?

23 A That's right. I will teach as a visiting professor  
24 at the University of Maryland at its law school in  
25 Baltimore, and then at George Washington University.

1 Q And how long have you been licensed to practice law -  
2 - I think I asked that already, but once again, let's  
3 go back over it.

4 A I was licensed in California in 1992 and in  
5 Washington, D.C. in 1995.

6 Q And you practiced law privately?

7 A That's right. I practiced in a law firm in San  
8 Francisco by the name of Morrison and Foerster.

9 Q And then proceeded with an academic career; is that  
10 correct?

11 A That's right. I taught in various capacities at  
12 Stanford, Columbia, University of Michigan, and for  
13 nine years, I was honored to be on the faculty at  
14 Howard University.

15 Q You're originally from the Detroit area, I believe;  
16 is that correct?

17 A That's correct. I grew up here and that's why I  
18 returned to take on this job as dean.

19 Q And your areas of specialty in terms of your academic  
20 work have been what --

21 A I've taught and done research in civil procedure, in  
22 evidence, and in professional responsibility and  
23 federal courts, among other subjects. Those would be  
24 the ones most pertinent here.

25 Q Professional responsibility would include legal

1 ethics; is that correct?

2 A That's right; it's just a fancy name for legal  
3 ethics.

4 Q And civil procedure would include, among other  
5 things, issues that arise in connection with the  
6 settlement of cases; is that correct, sir?

7 A That is correct. In fact, I have followed that area  
8 ever since I was a law clerk for a federal judge, and  
9 he had a case involving a very complex settlement,  
10 and so yes, it's an area that I have taught in.

11 Q Now, as well, you have engaged in other areas and  
12 forms of public service; is that correct, sir?

13 A That's right. I was appointed by the mayor of  
14 Washington, D.C., and confirmed by its city council  
15 as the chair of the human rights commission, and  
16 later served again as a member of that body. I've  
17 also served for the D.C. Court of Appeals on its  
18 Board of Professional Responsibility; that's a body  
19 that adjudicates claims brought against lawyers.  
20 Disbarment primarily, and I did that for about a year  
21 and a half, and prior to that was on a hearing  
22 committee of that same body for six years. So I have  
23 seven and a half years of experience adjudicating  
24 attorney discipline matters.

25 Q In addition, are you on the board of trustees of any

1 major private or public institutions?

2 A I'm on several boards. I'm on the board of the  
3 Leadership Conference for Civil Rights Education  
4 Fund, and I am the co-chair of its audit committee.  
5 I am on the board of the Committee of One Hundred, a  
6 civic group founded by Yo-Yo Ma, I.M. Pei, and  
7 others, to advance Chinese Americans in politics and  
8 ties between the U.S. and China, and for eight years  
9 I served on the Board of Trustees of Gallaudet  
10 University in Washington, D.C. That's a school -- a  
11 unique school serving the deaf and hard of hearing.  
12 I'm the vice chair of that body, and have previously  
13 chaired its audit committee, and have done quite a  
14 bit of work on the issues of academic chair  
15 governance; that is how responsibility is divided  
16 between the President and the faction.

17 Q You've also published a number of works, both  
18 scholarly and non -- works of non-fiction, I believe:  
19 is that right?

20 A That's right. I am the author or co-author of two  
21 books, a half dozen or so book chapters, of about 250  
22 articles, ranging from law review articles, to op-ed  
23 pieces and editorials in the Free Press.

24 Q And those include -- have included or has been an  
25 emphasis your work on the issues of civil and human

1 rights; am I correct?

2 A That's right. Almost all of the work is in that  
3 area.

4 Q Now, as chair of the human rights commission, could  
5 you just outline briefly what your activities were in  
6 that capacity?

7 A Sure. I presided over the body as it considered  
8 policy issues that arose that affected the civil  
9 rights of people living in Washington, D.C., and also  
10 served on panels that adjudicated individual cases.

11 Q So, you -- well -- withdraw that. As the -- in your  
12 position in the D.C. Court of Appeals, what was the  
13 name of the --

14 A The Board on Professional Responsibility.

15 Q Board of Professional Responsibility; what were your  
16 duties and obligations?

17 A That's -- was an appellate body that reviewed  
18 decisions that have been made by hearing committees  
19 in cases ranging from censure of lawyers all the way  
20 to disbarment. So, I deliberated with the other  
21 eight members of that body on cases, authored its  
22 decisions, and heard the oral arguments that lawyers  
23 made as part of that process.

24 Q And you were also a hearing officer with the same  
25 body and made decisions in the same -- with regard to

1 similar matters; is that right?

2 A That's right. For six years, I adjudicated on panels  
3 of three; two attorneys, one layperson, on cases also  
4 brought concerning lawyers and whether they had  
5 violated the rules.

6 Q Now, with regard to the matter in which we are here  
7 today about, which is the -- the issue of the  
8 settlement of the Brown, Nelthrope, and Harris cases,  
9 this body's role and this body's relationship with  
10 its corporation counsel, have I given you some  
11 material to review, and have you reviewed it?

12 A Yes, you have, and yes, I have.

13 Q And that would include a bound volume of critical  
14 documents; is that right?

15 A That is correct.

16 Q And a blue volume of supplemental critical documents?

17 A That's correct.

18 Q And a copy of the transcript from the closed hearing  
19 before this -- this body on September 19th, I  
20 believe; is that right, sir?

21 A Yes, and indeed I have all of those documents --

22 Q All right. And have you reviewed those documents and  
23 come to any conclusions with regard to --  
24 administration, governmental structures, and how this  
25 body can better perform its obligations and

1 responsibilities in the future with regard to  
2 approving and consenting in settlements, as well as  
3 obtaining complete, full, and pertinent disclosure  
4 from its attorneys in Corporation Counsel's office?

5 A Yes, sir.

6 Q And let's start with the question of the relationship  
7 between Corporation Counsel and the Detroit City  
8 Council. By the way, have you also reviewed the  
9 Charter of the City of Detroit, and are you familiar  
10 with it?

11 A Yes, I have.

12 Q As you know, and as I informed you, we have testimony  
13 from a professor from the University of Michigan who  
14 teaches professional responsibility and legal ethics  
15 with regard to whose client the Corporation Counsel  
16 is, and the role -- relationship between council --  
17 the Detroit City Council and Corporation Counsel,  
18 from the perspective of legal ethics and the Rules of  
19 Professional Responsibility. Have you looked at that  
20 same relationship from another perspective, Dean Wu?

21 A Yes, I have.

22 Q And tell us what that perspective it and what your  
23 conclusions are.

24 A I believe there are four possibilities here. The  
25 first is that the Mayor is the client; the second is

1           that the City Council is the client; the third is  
2           that both are clients; and the fourth is that neither  
3           are clients. It seems to me that the best arguments  
4           that could be made are that it is either two or  
5           three; that is it is either the City Council is the  
6           client, or arguably both the Mayor and the Council  
7           are.

8       Q     Now, that's from the perspective of the -- of -- of  
9           the Rules of Professional Responsibility and legal  
10          ethics; is that correct?

11       A     That's correct. And -- and --

12       Q     Go ahead -- go ahead. I --

13       A     I would add that I think the issues raised here,  
14           looking forward at how to structure the office and  
15           processes do involve these concerns; that is what are  
16           the ethical obligations of the lawyers involved. But  
17           they go beyond that --

18       Q     Well, that's --

19       A     -- separate set of issues as well.

20       Q     And that's what I wanted you to address, since we've  
21           already had a witness who addressed the -- the first  
22           set of issues as well, and if -- the members of  
23           Council may have some questions about the first area,  
24           and I gather you'd be prepared to answer them if they  
25           do. But what is the second perspective that you just

1 mentioned, that go beyond the issue of legal ethics?

2 A Well, even beyond the issue of the ethical  
3 responsibilities of the attorneys involved; those  
4 handling cases, those who come before this body, even  
5 if we were to assume that the Council is not a  
6 client, nonetheless, there are still duties to a  
7 governmental body, to a tribunal, duties -- even if  
8 we set aside the concerns about who the client is,  
9 nonetheless, it would seem that as attorneys work on  
10 cases, as they settle cases, as legal issues arise,  
11 they would have responsibilities to this body, even  
12 if the body were not considered a client.

13 Q And have you examined and come up with some proposals  
14 with regard to what the -- what possible mechanisms  
15 or structures could be put in place to assure that  
16 there is complete, full, or at least adequate  
17 disclosure between Corporation Counsel and the  
18 Detroit City Council?

19 A Yes, I have. Let me divide this into two parts.  
20 First, there are possible changes to the structure of  
21 the office; and second, there are some possible  
22 changes to the process that's used. So, let me talk  
23 about each of those in turn.

24 Q When you say structure of the office, you mean which  
25 office, sir?

1 A If we take a look at the Corporation Counsel and its  
2 relationship to both the Mayor's office and the  
3 Council -- so the possible changes which likely would  
4 require amendment to the Charter in some manner could  
5 include making explicit in the Charter who the client  
6 is, what the reporting line is, who supervises  
7 lawyers. It could include specifying hiring and  
8 firing and approval in greater detail. It could  
9 involve a dual reporting line; for example, that the  
10 Corporation Counsel had obligations to both the  
11 Mayor's office and this Council -- this body. So,  
12 all of that could be set forth with greater clarity,  
13 greater detail. There's some other structural  
14 possibilities; those could involve setting up a  
15 system for the settlement of cases that look at risk  
16 management that might involved an independent panel  
17 of outside attorneys. For example, experience  
18 attorneys, plaintiffs and defense attorneys, who  
19 might provide a early look at a case and opine or in  
20 some way oversee Corporation Counsel as they work on  
21 these matters, in a -- in a confidential fashion, of  
22 course. So there are a variety of changes that you  
23 can make to the structure of that office, who it  
24 reports to, how it reports, when it reports, how  
25 often it reports, and what detail, and all of that

1 would alter the relationship within the government  
2 and make more explicit the relationship between  
3 Corporation Counsel on the one hand, and this body on  
4 the other hand.

5 Q Now, let me just back up for just a minute. We'll  
6 talk about the structure as you've just described it.  
7 In -- in making suggestions or suggestions and  
8 possibilities having kept in the mind the importance  
9 of first of all, avoiding micromanagement, and  
10 secondly of allowing Corporation Counsel's office to  
11 be as independent so -- as possible, so that it can  
12 function as effectively and productively as possible.

13 A Absolutely. It's also crucial that the lawyers --  
14 given the volume of legal matters that arise, as  
15 they're handling everything from slip and falls on  
16 government property, whether that's on the sidewalk,  
17 to allegations brought about police misconduct, the  
18 high volume of cases, I think precludes the Council  
19 being directly involved in every single matter, and  
20 many of them are ones in which there are no issues of  
21 public policy that come up. They may be individually  
22 tragic cases, compelling cases, one in which there's  
23 justice to be done, but that do not present issues  
24 that go beyond just those parties. So it is  
25 important to bear all that in mind. There's a

1 broader trend in the private sector, in major non-  
2 profits, as well as with public bodies towards  
3 transparency and disclosure. In the private sector,  
4 everyone was aware that Congress as passed the  
5 Sarbanes-Oxley Act, and continued to add to that, so  
6 that major companies have many, many more  
7 requirements now of disclosure, of reporting, of  
8 oversight, and the role of internal auditors, for  
9 example, has become much greater over the past few  
10 years. Non-profits have been moving that way too.  
11 Although they aren't necessarily covered by Sarbanes-  
12 Oxley, many of them have adopted some of those same  
13 best practices, and so in the course of just a few  
14 years, you see a tremendous increase in the need to  
15 have written standard operating procedures, to have  
16 oversight bodies, to -- to regular data collection  
17 and reporting, to insure that there's accountability  
18 and that by objective measurements, you always know  
19 what corporations, non-profits, or I would argue,  
20 public bodies are doing.

21 Q You mentioned hiring and firing as one structural --  
22 one area where structural change could, and I believe  
23 perhaps should be made; is that right?

24 A That's right.

25 Q And would you talk about that a little bit?

1 A Sure. There is a possibility to have a greater  
2 advice and consent role, or to directly shift  
3 authority for hiring and firing to this body, and  
4 that would be one possibility. Or to insure that the  
5 City Council has a legal staff of its own; that's  
6 another possibility, as according to branch or  
7 government, and so there are a variety of ways that  
8 you could have the same result.

9 Q You've been advised by me, I believe, that the  
10 Council does have a research and analysis division;  
11 is that right, and you're aware of that?

12 A That's right -- that's right, and that's -- body  
13 could be changed, so that it is more explicitly given  
14 authority to provide legal counsel and more formal  
15 role, a role that would enhance its work.

16 Q I -- I want to talk about advice and consent for just  
17 a moment. What did you mean by that, and it -- how  
18 would you see that as a -- you know, helpful here?

19 A Well, it -- what's crucial is to establish trust, and  
20 trust is in many ways subjective, it's ever-changing,  
21 it's -- it's difficult to foster. And that's why I  
22 think in a formal setting, it may be more useful to  
23 talk about structures and processes that help enhance  
24 trust; that create a professional setting where trust  
25 is likely to grow over time. So, advice and consent

1 could be structured so that the Council had a much  
2 more extensive role as individuals were considered  
3 for the job of coming before the Council, of being in  
4 some sense reviewed by the Council --

5 Q You understand under the Charter, Corporation Counsel  
6 -- the -- the Corporation Counsel is hired by the  
7 Mayor, but it must be approved by the City Council,  
8 do you not?

9 A That's right. But I'm talking about a more extensive  
10 version of that. Advice and consent at the federal  
11 level the Senate has changed over time, and it has  
12 become much more extensive than it was say 100 years  
13 ago or 50 or even 25 years; many people date that, of  
14 course, as the nomination of Robert Bork as -- as a  
15 justice and the hearings that were conducted at that  
16 time, so it is possible to have in a cordial  
17 effective manner, more extensive discussion with  
18 candidates and a greater role. So, it's not just  
19 what is written in the Charter, but what the actual  
20 practice is --

21 Q Now, with regard to the firing; what's your  
22 understanding of how -- how that would work --  
23 currently works with the -- with the Corporation  
24 Counsel and the -- and the City Charter?

25 A I was -- the Mayor would have authority to remove

1           someone from that office --

2       Q       Does your suggestion incorporate the idea of some  
3               role in that process as well for the City of Detroit  
4               City Council?

5       A       It -- it could, especially if the advice and consent  
6               role is enhanced. The Mayor likely anticipating the  
7               need to have someone new come in would realize that  
8               it would be important to -- that the departure of the  
9               last person so as to secure a bit more friendly  
10              reception for the next person.

11      Q       Have you considered the possibility of establishing a  
12               good cause condition for the discharge or firing of -  
13               - of a corporation counsel?

14      A       That's possible as well. Either good cause or to  
15               give the Council a formal role; to have advice and  
16               consent on the back end as well.

17      Q       And how would this assist in the situation that  
18               you've discussed of establishing trust between  
19               Council and Corporation Counsel as well as between  
20               the Mayor and Corporation Counsel?

21      A       It would make Corporation Counsel aware that this  
22               body was a body that Corporation Counsel had to be  
23               sensitive to; that its interests had to be borne in  
24               mind; and also, that in the event that a problem  
25               arose where for some reason if Corporation Counsel

1 were providing advice that the City Council believed  
2 was appropriate, but for some reason the Mayor, for  
3 reasons other than good cause, wanted to remove the  
4 person, that the person holding the job would know  
5 that the City Council would be able to protect the  
6 office; that the office would have some independence  
7 and not be entirely beholden just for the Mayor.

8 Q You mentioned the issue of risk management, and  
9 Professor McCormack talked about conflicts risk --  
10 risk management. Do you have an understanding of  
11 what that might mean? I don't want to ask you about  
12 it in detail; just setting that aside, do you know  
13 what she might have meant by that?

14 A Yes.

15 Q What did you mean or what are you talking about when  
16 you talk about risk management?

17 A Well, let me turn to a process now. There's some  
18 changes that could made with respect to the process.  
19 Almost all civil cases settle. It's relatively rare  
20 that civil cases, even those brought against a city,  
21 go to trial. A few do go to trial. But whether they  
22 settle or go to trial, it might make sense to create  
23 a process where data is kept. I understand some data  
24 already is kept, but more extensive data is kept on  
25 the volume of cases, the settlement -- settlement

1 amounts, the rationales for settlements, so that  
2 aggregate data could be reviewed by this body,  
3 perhaps annually or more often, so that trends could  
4 be observed and seen, and that would facilitate  
5 creating a system where cases could be evaluated  
6 earlier for the level of exposure and for the types  
7 of sensitive issues that might be posed. You could  
8 devise a list of factors that would trigger greater  
9 review and scrutiny, either by an independent panel  
10 or by a supervisor at a higher level, or by the  
11 Council itself. So, those might include has a city  
12 official retained independent counsel? Is there  
13 reason to believe a conflict of interest has arisen?  
14 Is the dollar amount above a certain threshold, say  
15 \$1,000,000.00, or \$5,000,000.00, or within the top  
16 ten percent of -- of the cases settled the prior  
17 year? So that --

18 Q When you say --

19 A -- flags --

20 Q Well, let me -- let me just stop you there with  
21 regard to when you talk about a -- an amount on a  
22 case. If a case has not yet settled or has not yet  
23 gone to trial, we don't necessarily have an amount on  
24 it. Are you suggesting that these cases be screened  
25 and that there be some assessment as to whether or

1 not amounts, say at levels above \$1,000,000.00, for  
2 example, are -- serious potential with any given  
3 case, and that that would be, for example, one of the  
4 flags that you're talking about?

5 A Absolutely. You find in private practice, whether  
6 you look at plaintiff's counsel or defense counsel,  
7 that firms have a very sophisticated means now of  
8 analyzing what is the potential liability here,  
9 what's the potential recovery, and of assessing based  
10 on databases that they maintain based on the record  
11 of prior cases, and sometimes a little bit of  
12 guesswork -- there's always a little bit of  
13 subjectivity and -- and hunch -- hunches built into  
14 this; you can take a look, and whether it's a slip  
15 and fall, whether it's a police misconduct case, any  
16 type of case now is amenable to and most lawyers who  
17 are sophisticated will engage in some sort of  
18 assessment very early, as soon as the complaint is  
19 filed, or the answer is filed, and they've talked to  
20 a few witnesses, you can come up with some sense of  
21 what's -- if you're the plaintiff, what's the likely  
22 range here based on prior cases. If it's a brain  
23 trauma, you look at other cases with brain traumas in  
24 -- in that jurisdiction; you look at what's been  
25 recovered there. You may have a few other factors

1 that you know appeal to juries or don't appeal. And  
2 likewise, if you -- on the defense side, if you're an  
3 insurance carrier, you look at actuarial tables and  
4 you do some analysis of -- of just the economic loss  
5 and so on and so forth. There are models that could  
6 be easily adopted for that.

7 Q And once a case has been flagged with one or more of  
8 these factors, let us say a potential for a large  
9 verdict, a huge amount of public or media attention,  
10 whatever it may be, would it then be put through a  
11 process. You talk about routine reporting and that  
12 kind of thing. Is that what you're suggesting?

13 A That's right. And that also insures that there isn't  
14 excessive management, micromanagement of routine  
15 cases. If you're only looking above a certain  
16 threshold amount, 95 percent of the cases fall below  
17 that; those can be handled by legal counsel as they  
18 would customarily be handled, but then those cases  
19 that are the largest, that present the greatest  
20 threats to the city, or that involve conflicts of  
21 interest or potential conflicts, or that present  
22 other novel issues. Perhaps it's a case that's never  
23 been seen before, might be precedent setting; there  
24 are about I -- I would say maybe a dozen factors,  
25 most of which we've listed, that you could have

1 someone with responsibility early in the process take  
2 a look and ask does this case present any of these  
3 factors, should we flag it, and if yes, then you  
4 could have either an independent body, or a  
5 supervisor, or the Council itself be briefed and --  
6 and follow the case.

7 Q And the reporting process that you're suggesting  
8 would involve reporting with regard to what kinds of  
9 factors and issues; would it be things like  
10 settlement possibilities, facilitation possibilities,  
11 alternative dispute resolution, those types of  
12 things?

13 A It would include all of that. It would include an  
14 assessment of the risk of liability should the case  
15 go to trial, and because this is a governmental body,  
16 of the effect not just economically, but the effect  
17 on policies, the perceptions, would this undermine  
18 the city and its functioning; all of that would be a  
19 -- a part of this process, and would insure that the  
20 Council is made aware of all material facts. The  
21 over -- goal here with all of this is for the  
22 decision-making to be based on all the material  
23 facts, so anything that would affect the value  
24 assigned to the case should then be disclosed.

25 Q So as I understand it then when a case ultimately is

1 submitted to Council, as it must be under the  
2 Charter, for consent and approval of the settlement,  
3 Council can ask Corporation Counsel, has -- since  
4 this -- is it one of those cases that's been flagged,  
5 and they might have a -- a checklist in front of  
6 them; was it routinely risk managed, was -- were  
7 there routine attempts to do this, that, and the  
8 other thing? Is that the kind of process that you're  
9 foreseeing in your testimony --

10 A That's right. And thus, 90, 95 of the cases would be  
11 processed no differently than they are now, with just  
12 that routine question asked. But then the high  
13 profile, high risk cases that may present a conflict  
14 of interest, or an additional factor that the City  
15 Council ought to be aware of, those would be noted.  
16 And unless they're noted for the Council, the Council  
17 doesn't have an independent means, unless it intends  
18 to review all of the files, of -- of knowing. It  
19 depends on the lawyers, and that's why there has to  
20 be the trust, and well you can build in these reforms  
21 to foster trust.

22 Q Were there any other process recommendations that you  
23 had in mind, other than what you've already spoken to  
24 this morning?

25 A I -- I think that -- that would cover it; that the

1 Council have a system what would insure in its  
2 executive sessions, so that of course this would be  
3 protected in a way -- FOIA has an exception that  
4 would cover this -- so that it doesn't compromise the  
5 case being settled at a dollar value that -- that  
6 would -- would be good for the City. And bearing in  
7 mind, as part of this, that confidentiality is always  
8 something that is bargained over and is worth  
9 something. That's true not just in high profile  
10 cases, it's true in slip and falls, true in any  
11 routine civil case that there will be some discussion  
12 of releases of liability, of confidentiality; there  
13 is a checklist that every attorney has, or should  
14 have. These are the things that I need to think  
15 about whenever a matter is settled. And, of course,  
16 attorneys have an obligation to apprise their clients  
17 of settlement offers, so this is already built into  
18 the system on the lawyer's side of things, but it may  
19 not be fully developed on the client side.

20 Q The client in this case being Detroit City Council,  
21 right?

22 A Yes, the City Counsel, either exclusively, or least  
23 partly --

24 Q Is there anything that you would wish to add in  
25 general to the testimony that you've given so far

1 this morning?

2 A Not at this time, no. Something may occur.

3 Q I'm sure members of Council will have some questions.

4 COUNCIL PRESIDENT PRO TEM CONYERS:

5 Council Member Watson.

6 COUNCIL MEMBER WATSON: Thank you,  
7 Madame President. I thank you very much for being  
8 here, Dean Wu -- appreciate the discussion this  
9 morning.

10 I'd like to ask about the Section 1.13  
11 in the Rules of Professional Conduct under the  
12 Michigan State Bar, which has a subsection that talks  
13 about government and attorneys who are -- are serving  
14 roles for government, and I seem to -- there's sort  
15 of a -- between the executive branch and legislative;  
16 it seems to favor Corporation Counsel is really  
17 working at the behest of the legislative branch. I'm  
18 saying the legislative branch as a client based on  
19 the information provided in that document. As such,  
20 the four options that you outlined today in your  
21 discussion, which is the City -- the Mayor could be a  
22 client, or the City Council, or both, or neither  
23 (inaudible) State Bar recommendations for conduct --  
24 centered on the Corporation Counsel being  
25 responsible, accountable to the executive branch and

1 the legislative branch -- two co-equal branches of  
2 government, but there is a Charter amendment --  
3 Corporation Counsel accountable to the -- and hired  
4 and fired by the Detroit City Council. Is that  
5 something that would run counter to the  
6 administration of governments in other major cities?

7 THE WITNESS: There -- there are many  
8 different models that major cities have used, not  
9 only as to this issue, but as you know, just the  
10 division of responsibility between the Mayor's office  
11 and the Council or whatever body is like the Council.  
12 So, Detroit is different in -- in many ways in having  
13 a full-time council like this, all the members chosen  
14 from the entire city and so on. A number of other  
15 major cities either have wards or districts or have  
16 part-time persons serving. So there -- there is no  
17 single model. It could certainly be done and I think  
18 it could be done in a way that comports with all of  
19 the ethical rules that the lawyers would have.

20 COUNCIL MEMBER WATSON: Given the  
21 challenges that face the City Council currently and  
22 the circumstances which you're aware of based on the  
23 information provided by Attorney Goodman, and the  
24 recommendations you've already offered today, are  
25 there some clear next steps you would recommend to

1 the Detroit City Council, just in terms of --

2 THE WITNESS: It's my understanding  
3 that Mr. Goodman will be preparing a report, and I  
4 would expect that his report would have some concrete  
5 next steps that the Council could consider that would  
6 involve amendment of the Charter, or even without  
7 amending the Charter, some of these can be done;  
8 reforms that can be brought about in risk management,  
9 in insuring the data is kept, reporting is done,  
10 without changing the structure. And that can  
11 certainly be done, and I would urge the Council to  
12 look at both changes in structure and changes in  
13 process along these lines, not just because a single  
14 case or claims that have been made, but recognizing  
15 that this is an important matter, that it's good to  
16 have clarity, and that the environment has changed.  
17 That there is now across the board a much greater  
18 level of interest in accountability, transparency,  
19 and in looking at the practices that are best or at  
20 least better. So this is the sort of thing that even  
21 if there were no controversy, perhaps every ten years  
22 or so would warrant the Council taking a look again  
23 and asking well, how has this been working, and that  
24 would be enhanced if there's data. Most important of  
25 all is to have this data to insure the Council has it

1 available so you can take a look at what exactly is  
2 the picture with respect to the lawsuits that are  
3 pending that concern the City.

4 COUNCIL MEMBER WATSON: On the much  
5 talked about settlement that involved \$8.4 million  
6 dollars; as you know, there's an issue --  
7 confidential document that was never brought to the  
8 Council that has caused a lot of ethical issues to  
9 emerge with respect to that, particularly as it  
10 impacts the attorneys in and around the case.  
11 There's another set of issues that has come up for me  
12 just this week, because I just learned this week, as  
13 a result of these hearings, that the \$8.4 million  
14 dollars which was approved by eight members of the  
15 Council in October, is that -- that particular  
16 settlement was rejected by the Mayor, in writing. So  
17 it was approved the third week in October, but  
18 rejected the last week in October by the Mayor.  
19 Subsequently, another settlement was signed by the  
20 Mayor; that second settlement never came back before  
21 the City Council. There is -- there is some language  
22 in there, however, which the Law Department  
23 references the earlier -- as if it was somehow  
24 automatic, and I believe that if something is  
25 rejected -- a settlement is rejected, you reject

1 everything in the settlement, you don't keep the  
2 money prior approved by Council, because the Council  
3 should not have just had the money figure, we should  
4 have had the entire settlement -- there is another  
5 set of ethical issues that has emerged. I -- I would  
6 just -- recommendations to us. I thank you once  
7 again for being here.

8 THE WITNESS: Thank you. It's an  
9 honor.

10 COUNCIL PRESIDENT COCKREL: Council  
11 Member Cockrel.

12 COUNCIL MEMBER COCKREL: Thank you.  
13 Good morning, Dean Wu.

14 A couple things. In your beginning  
15 remarks, you talked about the -- that even if the  
16 Council was not a client that the Corporation Counsel  
17 would have certain duties -- I think this is what you  
18 said -- to a governing body. Could you elaborate on  
19 that -- that structure?

20 THE WITNESS: Sure. Duties of candor.

21 COUNCIL MEMBER COCKREL: Say it again?

22 THE WITNESS: Duties of candor, so  
23 that when attorneys appear, for example, in court,  
24 the court is not their client, but attorneys have a  
25 duty of candor to the judge, and attorneys even

1           though their primary loyalty must be to their client,  
2           they also have some duties even to third parties.  
3           They cannot simply misrepresent all of the facts.  
4           They have to -- when they deal with witnesses or  
5           others, they have to identify that they're acting as  
6           counsel. So the rules are quite extensive and --  
7           clear that although the primary duty of lawyers is  
8           always to their clients, that lawyers also have  
9           duties, and every professional responsibility  
10          rulebook, every set of rules, and they vary state to  
11          state, but they all have a catchall provision that  
12          attorneys have an obligation not to obstruct justice,  
13          and that's often referred to where even if something  
14          doesn't fall exactly within the confines of any of  
15          the other rules, if it's serious enough and clear  
16          enough, and involves, for example, a  
17          misrepresentation to a governmental body, it likely  
18          is going to run afoul of that rule.

19                   COUNCIL MEMBER COCKREL: And then  
20           secondly, the -- one of the things I -- you know, I -  
21           - presuming -- but I would -- tab four is -- in Mr.  
22           Goodman's --

23                   MR. GOODMAN: Spiral.

24                   COUNCIL MEMBER COCKREL: Spiral book.  
25           Maybe not now, but -- what -- what I would

1 (inaudible) this is the structure -- the first one is  
2 the structure and it's a typical structure of a  
3 lawsuit memorandum that is provided to the Council  
4 prior to settlement of cases. It is followed by what  
5 we refer to as a transmittal which comes from the Law  
6 Department regarding a case, and then it's finally  
7 followed by the resolution, which is the actual  
8 document that is -- is a legally binding action that  
9 the Council takes. Could you, based on your vast  
10 experience, take a look at these and potentially  
11 offer to us some -- either -- some review of these --  
12 a way that they might be improved. I will note for  
13 the record, which is very interesting here, on this  
14 lawsuit memorandum, the one at tab four, does not  
15 contain a category called risk management. Maybe --  
16 some years ago, we made an agreement with the Law  
17 Department to provide a category called risk  
18 management issues. Unfortunately, most of the time  
19 (inaudible) cases all they basically say is we  
20 brought this matter to the attention of the police  
21 department and it sort of sits there. But adding  
22 that as a last category prior to the total  
23 settlement, if you could give us maybe, you know, an  
24 -- and through Mr. Goodman, some input on what might  
25 be improvements to those documents (inaudible)

1           checklists, things that have been discussed, I would  
2           appreciate -- appreciate that very much.

3                       And then the -- when you were laying  
4           out some of the process reforms, I just -- real  
5           direct, once trust has been breached between lawyers  
6           and their clients, you got a prescription for how you  
7           rebuild that?

8                       THE WITNESS:  It -- it is very  
9           difficult.  But that's why even though these formal  
10          processes won't guarantee it, they can make it more  
11          conducive.  So, you can set up a system that allows  
12          it over time to -- to build up.  I would say that  
13          having a good structure, having good process, is  
14          necessary, but not sufficient.  So it's just a  
15          beginning.

16                      COUNCIL MEMBER COCKREL:  So it is a  
17          beginning and -- and in your experience it's possible  
18          to rebuild trust over time?

19                      THE WITNESS:  I think we have to have  
20          that hope, and sometimes that occurs when there's a  
21          change in personnel, or other changes that just come  
22          to pass through time.

23                      COUNCIL MEMBER COCKREL:  Thank you,  
24          Mr. President.

25                      COUNCIL PRESIDENT COCKREL:  Council

1 Member Kenyatta is next.

2 COUNCIL MEMBER KENYATTA: Thank you,  
3 Mr. President. Thank you, sir, for being here.

4 Questions; you I believe testified  
5 that the Corporation Counsel has as his clients  
6 Council. Is that Council collectively, or Council  
7 collectively and individually?

8 THE WITNESS: That -- that's a good  
9 question. I -- I believe it would have to be the  
10 Council as a corporate body; that is it would not be  
11 individual council members officially or personally.

12 COUNCIL MEMBER KENYATTA: But if the  
13 corporation counsel representing the council as a  
14 body engage in discussions with council members  
15 individually, is that subject to attorney/client  
16 privilege about the case?

17 THE WITNESS: I -- I believe the  
18 answer to that is yes.

19 COUNCIL MEMBER KENYATTA: And any  
20 discussion of that conversation without the approval  
21 of council member or the council, would be a  
22 violation of attorney/client privilege in your  
23 opinion?

24 THE WITNESS: If an individual council  
25 member and corporation counsel discuss a pending

1 case, you're saying that corporation counsel then had  
2 a further discussion with a third party.

3 COUNCIL MEMBER KENYATTA: Mm-hmm.  
4 Concerning the merits of the case.

5 THE WITNESS: Right -- right;  
6 concerning the discussion between the council member  
7 and -- and corporation counsel --

8 COUNCIL MEMBER KENYATTA: Concerning  
9 the merits of the case.

10 THE WITNESS: Yes. I -- I believe  
11 that would be a breach, although that's why it isn't  
12 clear to me that the mayor is altogether not a client  
13 at all. I believe that the executive branch would  
14 fall within the gambit of -- of what -- what could be  
15 discussed, so by third party what I would be talking  
16 about is some other party; not the mayor, not --

17 COUNCIL MEMBER KENYATTA: Right. And  
18 I wasn't talking --

19 THE WITNESS: Right.

20 COUNCIL MEMBER KENYATTA: -- about the  
21 Mayor --

22 THE WITNESS: So, the attorney  
23 certainly should not go and talk to the Free Press,  
24 for example; that would be a clear breach.

25 COUNCIL MEMBER KENYATTA: I have one

1 last --

2 MR. GOODMAN: Or, to be fair, the  
3 News.

4 THE WITNESS: That's right. Or -- or  
5 -- or to be fair, the News.

6 COUNCIL MEMBER KENYATTA: Okay.  
7 Finally, there are a number of documents that Member  
8 Watson pointed to, as well as Member Cockrel, under  
9 tab four, tab five, tab six, tab seven. In a number  
10 of those documents, the Mayor signs as Mayor Kwame  
11 Kilpatrick. In documents under seven and eight and  
12 nine and ten, the Mayor signs as Kwame Kilpatrick.  
13 Is it your opinion that when the Mayor is signing as  
14 Mayor Kwame Kilpatrick, that he's operating in  
15 official capacity, and when he's not signing as such,  
16 leaving off the mayor and signing documents that was  
17 unknown to Council as Mayor -- as Kwame Kilpatrick,  
18 that he's not acting in official capacity.

19 THE WITNESS: In preparing for this  
20 testimony, I have not looked at the specific issues  
21 concerning the ethics that arise from this case. I  
22 thought about structure and process and moving  
23 forward. So, I don't have really a fully formed view  
24 on that.

25 COUNCIL MEMBER KENYATTA: Okay, thank

1                   you.

2                               COUNCIL PRESIDENT COCKREL:  President  
3                   Pro Tem.

4                               COUNCIL PRESIDENT PRO TEM CONYERS:  
5                   Thank you.

6                               Dean Wu, do you know of any cities of  
7                   municipalities or government agencies that does not  
8                   hire and fire their corporation counsel?

9                               THE WITNESS:  That -- that do not?

10                              COUNCIL PRESIDENT PRO TEM CONYERS:  
11                   That does not hire and fire the corporation counsel?

12                              THE WITNESS:  Yeah.  I -- I believe  
13                   there are a number of cities where the council does  
14                   not hire --

15                              COUNCIL PRESIDENT PRO TEM CONYERS:  
16                   No, no, no.  That -- that the mayor --

17                              THE WITNESS:  Oh, I'm sorry; that the  
18                   mayor -- the mayor.  I believe that there are  
19                   jurisdictions in which the legislative body plays a  
20                   more extensive role.  I have not conducted an  
21                   exhaustive survey.  I would certainly be willing to  
22                   do some follow-up and take a look at some examples  
23                   that might be used.

24                              COUNCIL PRESIDENT PRO TEM CONYERS:  
25                   Okay.  You talked about good cause standard for the

1 purpose of firing corporation counsel. Does it make  
2 the corporation counsel more powerful than the mayor,  
3 or of all the mayor's appointees -- when all the  
4 mayor's appointees serve at the mayor's pleasure, why  
5 do you think corporation counsel should be any  
6 different when it -- the corporation counsel is  
7 appointee of the mayor?

8 THE WITNESS: That's a very good  
9 question. It would in part go hand-in-hand with  
10 other structural changes that would alter the  
11 reporting line, so that Corporation Counsel either  
12 had a responsibility to the City Council, or had a  
13 dual reporting line; that is have responsibility both  
14 to the Mayor's office and to this body.

15 COUNCIL PRESIDENT PRO TEM CONYERS: So  
16 when you talk about for good cause, good cause can be  
17 any gamut of things for good cause. Does that open  
18 the City up to lawsuits?

19 THE WITNESS: Well, it -- there's  
20 always a risk, but there's a risk if that isn't  
21 adopted as well.

22 COUNCIL PRESIDENT PRO TEM CONYERS: So  
23 --

24 THE WITNESS: But it wouldn't make the  
25 Corporation Counsel more powerful, because certainly

1 insubordination, for example, would be good cause to  
2 terminate, and if the Mayor, on an important policy  
3 matter, directed Corporation Counsel to represent the  
4 City and let us say that the City Council agreed with  
5 the Mayor, and Corporation Counsel simply flatly  
6 refused to do that, that would be conduct that would  
7 be good cause to terminate. But it wouldn't make the  
8 Corporation Counsel more powerful in the same sense  
9 that the Mayor is unable to terminate members of this  
10 body from their service, and --

11 COUNCIL PRESIDENT PRO TEM CONYERS:

12 Well, that would be because he doesn't appoint us.

13 THE WITNESS: Right. But what I'm  
14 saying is it doesn't make members of this body more  
15 powerful than the Mayor, it just change -- it just  
16 means that the Mayor doesn't have the authority to  
17 remove with no rationale whatsoever.

18 COUNCIL PRESIDENT PRO TEM CONYERS: I

19 don't see how that applies, because we're two equal  
20 branches of government, and he doesn't appoint us.

21 So my last question is when you're  
22 sued by your lawyer, does that waive privilege as to  
23 confidentiality in matters in that particular case  
24 that you may have had when your lawyer sues you?

25 THE WITNESS: When your lawyer sues

1           you or when you sue your lawyer? Those -- those  
2           would be two different cases.

3                   COUNCIL PRESIDENT PRO TEM CONYERS:

4           When you sue your lawyer, or when your lawyer sues  
5           you, you can --

6                   THE WITNESS: Right. If -- if you  
7           have a lawyer, you get into a dispute with the  
8           lawyer, and you fire the lawyer, you then sue your  
9           lawyer.

10                  COUNCIL PRESIDENT PRO TEM CONYERS:

11           Mm-hmm.

12                  THE WITNESS: Your lawyer is entitled  
13           to defend himself or herself, and if in responding to  
14           the claims that you have raised, the lawyer must  
15           disclose certain confidences, that would be  
16           allowable. It's not necessarily true the other way  
17           around though, if the lawyer sues you. So, for  
18           example, you might have worked with the lawyer; the  
19           lawyer regards the matter as closed satisfactorily,  
20           but you don't pay your lawyer.

21                  COUNCIL PRESIDENT PRO TEM CONYERS:

22           Mm-hmm.

23                  THE WITNESS: Your lawyer then sues  
24           you. The lawyer is not now entitled to disclose the  
25           confidences from the matter he or she just settled.

1 COUNCIL PRESIDENT PRO TEM CONYERS:

2 Right. Okay, thank you.

3 COUNCIL PRESIDENT COCKREL: Council  
4 Member Tinsley-Talabi.

5 COUNCIL MEMBER TINSLEY-TALABI: Thank  
6 you, Mr. President. Good morning, Mr. Wu.

7 Can you please speak -- more about how  
8 this Council at this point -- avoid micromanagement.  
9 There's no doubt that there's corrective action that  
10 needs to be taken, but how do we do that and maintain  
11 balance?

12 THE WITNESS: Right. That's, of  
13 course, a -- a concern that everyone would have if  
14 the structure of the process were changed. I don't  
15 think anyone is proposing, and I certainly wouldn't  
16 come before you to recommend that you intervene on  
17 every slip and fall case. That would be, in my view,  
18 irrational on your part and cause Corporation Counsel  
19 and its work, everything would just grind to a halt.  
20 But there is a way to manage appropriately without  
21 micromanaging; of insuring that -- only a handful of  
22 cases, it would seem to me, need to be brought to  
23 this body and discussed in detail. Ones where the  
24 exposure is especially high, where there's policy at  
25 stake, where there's a potential conflict of

1 interest, where the issues that are being looked at  
2 could potentially tarnish the City, and so on and so  
3 forth, or ones where there are unusual factors. So,  
4 that's what I'm talking about. That a system can be  
5 devised so that those cases with unusual factors are  
6 brought here and the briefing is more extensive, and  
7 then of course the expectation is with every case,  
8 even the slip and falls, the material facts are made  
9 known to this body. And the material facts would  
10 include alterations of the agreement as it  
11 progressed; it would include confidentiality; it  
12 would include conflicts of interest. All of those  
13 would be material; all of those change the settlement  
14 value of the case. Lawyers that are interested in  
15 confidentiality will pay a premium to get it and  
16 their clients too. Confidentiality is worth  
17 something.

18 COUNCIL MEMBER TINSLEY-TALABI: Thank  
19 you.

20 COUNCIL PRESIDENT COCKREL: That was  
21 your only question?

22 COUNCIL MEMBER TINSLEY-TALABI: Yes.

23 COUNCIL PRESIDENT COCKREL: All right.  
24 Council Member Jones is next.

25 COUNCIL MEMBER JONES: Thank you.

1 Good morning.

2 THE WITNESS: Good morning.

3 COUNCIL MEMBER JONES: Thank you for  
4 being here.

5 My first question is what is your  
6 understanding on how the City's Law Department is  
7 organized and what its reporting structure --

8 THE WITNESS: Of -- of how it's  
9 organized and reports now?

10 COUNCIL MEMBER JONES: Right.

11 THE WITNESS: It -- it appears that  
12 the reporting is fairly straightforwardly up to the  
13 Mayor. That -- that is that it's -- it's in the same  
14 reporting line that would lead to ultimately the  
15 Mayor.

16 COUNCIL MEMBER JONES: Based on your  
17 knowledge of the City's Law Department operations,  
18 what specific weakness can you identify in its  
19 current structure?

20 THE WITNESS: I'm sorry; say that  
21 again. What -- what weakness is --

22 COUNCIL MEMBER JONES: Based on your  
23 knowledge of the City's Law Department operations,  
24 what specific weakness can you identify in its  
25 current structure?

1 THE WITNESS: Oh. Well, rather than  
2 characterize it as a -- a weakness, I certainly  
3 wouldn't wish to impugn the -- the work of the  
4 lawyers. I would say there are ways that  
5 improvements could -- could be brought about, and  
6 those improvements would have to do with insuring  
7 that material facts are presented to this body; that  
8 those cases that present unusual features or high  
9 levels of risk and exposure are more thoroughly  
10 vetted before this body. That's what I would  
11 suggest. I would identify those primarily.

12 COUNCIL MEMBER JONES: My final  
13 question is do you have any knowledge of how the Law  
14 Department currently processes its cases -- what  
15 consideration they give to when cases should be  
16 settled and -- you know, if there's conflicts going  
17 on --

18 THE WITNESS: Yes. I've reviewed all  
19 of the documents that have been provided to me, not  
20 just from this matter, but some that show that there  
21 is a -- a rudimentary tracking system of what the  
22 categories of cases are and so on. There are the  
23 beginnings of this, so improvements could be made.  
24 But yes, I -- I have taken a look at that, and from  
25 these documents, pieced together what appears to be

1 the process that is followed.

2 COUNCIL MEMBER JONES: To -- to follow  
3 that question, is there any advice you can give to  
4 this Council when dealing with the Law Department and  
5 their structure (inaudible) and what we should be  
6 looking at --

7 THE WITNESS: Sure. And I'd be  
8 pleased to work with your special counsel to insure  
9 that that's documented in greater detail based on  
10 what I've said. But the very first thing you could  
11 do with no structural change would be to request that  
12 Corporation Counsel set up a more extensive risk  
13 management system that would assess cases earlier;  
14 analyze what the exposure was and what the unusual  
15 factors were, and sort out those handful of cases  
16 that are more high profile and need greater care in  
17 handling. So that -- that could be set up  
18 immediately.

19 COUNCIL MEMBER JONES: Thank you.  
20 Thank you, Mr. President.

21 COUNCIL PRESIDENT COCKREL: You're  
22 welcome. Council Member Reeves is next.

23 COUNCIL MEMBER REEVES: Thank you, Mr.  
24 President. I'm sitting right next to Council Member  
25 Jones, but we seem to be on the same page. I was

1 going to ask if -- Mr. Goodman that you would include  
2 some recommendations for the amendments or changing  
3 of the structure regarding our -- our Charter -- and  
4 what we should do as a -- as a Council to better  
5 understand the actions of -- the activities of the  
6 Law Department, and what we need to do -- investigate  
7 having out own separate legal counselors, because you  
8 said that the -- the corporation counsel could  
9 represent the Mayor and represent the Council, both  
10 or none, and if we had our own -- I did ask before,  
11 if we had our -- could have our own legal  
12 representation, so that could be something this -- to  
13 -- to this -- analyze and try to discover how to have  
14 our own separate legal counsels. I -- I see in some  
15 instances where our -- our RAD department is giving  
16 us legal advice on a daily basis. If we had our own  
17 people, we could rely more on them, and be more aware  
18 of what's happening -- different cases that are  
19 brought before us in determining how to settle them  
20 or whatever.

21 THE WITNESS: That's right. You could  
22 enhance their status, or what you're doing right now  
23 is a great case study. The Charter provides that  
24 you're able to retain special counsel, you've done  
25 so. One possibility would be to avail yourself of

1 special counsel in a wider range of cases. I don't  
2 know if Mr. Goodman would be available, but there are  
3 a number of talented lawyers who could be brought in  
4 where there's a particular concern. And it's -- it  
5 is become increasingly common for governmental bodies  
6 to retain, for particular matters, someone with  
7 expertise in that area of law, to come in on a short-  
8 term, could be a matter of weeks or a matter of  
9 months, and just to do that matter.

10 COUNCIL MEMBER REEVES: Could we also  
11 have that (inaudible) consideration and --

12 THE WITNESS: I -- I believe so, yes.

13 COUNCIL MEMBER REEVES: Thank you, Mr.  
14 President.

15 COUNCIL PRESIDENT COCKREL: President  
16 Pro Tem, and then I have one question.

17 COUNCIL PRESIDENT PRO TEM CONYERS: I  
18 -- I don't know if this was your recommendation or  
19 not; you talked about firing for good cause, and if  
20 this body -- if the power is turned over to this  
21 Council where the Council could fire for good cause,  
22 then what if the attorney fees that -- general  
23 counsel feels that it wasn't good cause; there's a  
24 possibility that the attorney could decide he wanted  
25 to sue us for wrongful termination, that they could

1 possibility call the Mayor or other Council members  
2 in as witnesses, right?

3 THE WITNESS: That's possible. I'm  
4 trying to list all of the ideas that you could look  
5 at that are within the -- the range of reason.  
6 That's a possibility. It would be different than the  
7 structure in many places, and I would presume if --  
8 if you look down the road -- if you set up a system  
9 like this, so that the Mayor had to have good cause,  
10 and a conflict then arose between Corporation Counsel  
11 and the Mayor, and the Mayor wanted to terminate  
12 Corporation Counsel, the Mayor could very well ask  
13 Corporation Counsel for advice, am I terminating you  
14 for good cause. So presumably, the Mayor would need  
15 to avail himself or herself of advice from an  
16 employment lawyer on a special ad hoc basis to come  
17 in and study and say you have good cause here or you  
18 don't have good case.

19 COUNCIL PRESIDENT PRO TEM CONYERS:

20 Our Law Department is broken up into many sections,  
21 so there is an employment section -- in the Law  
22 Department; they all fall under general counsel. So  
23 at the same time, is -- are there any places that you  
24 know of where the mayor can appoint the people that  
25 he hires to work for him, but then he can't fire them

1 if that's what he choose to, would be the same as  
2 Council members here can hire whoever they want and  
3 if they don't think things are working out with them,  
4 they can release them of their duties, right?

5 THE WITNESS: Right. But even if  
6 you're an employee at will, you're still protected by  
7 a number of rules. So, for example, it -- I'm just  
8 imaging the case; I'm sure that this has not occurred  
9 and would not occur. Even if the current structure  
10 existed as it now exists, a mayor could not turn to  
11 corporation counsel and say it is on account of your  
12 race that I am now terminating you.

13 COUNCIL PRESIDENT PRO TEM CONYERS:  
14 Well of course, not. We would hope that it wouldn't  
15 be --

16 THE WITNESS: Right.

17 COUNCIL PRESIDENT PRO TEM CONYERS: --  
18 race, age, sex, or ethnicity, or anything like that,  
19 but other than things that are defined by the  
20 Constitution under the First Amendment, we would hope  
21 that it would be any of those things; are there any  
22 other scenarios that you could think of that could  
23 possibility lead to a potential liability that we  
24 can't hire -- fire for cause other than those --

25 THE WITNESS: You mean under the

1 current structure; there could be potential breach of  
2 contract issues. There -- there's always a risk,  
3 even when an employee is at will or serves at the  
4 pleasure, there is always a risk that if he or she is  
5 terminated and it's unpleasant, that they could have  
6 a colorful claim.

7 COUNCIL PRESIDENT PRO TEM CONYERS: Or  
8 they could just sue -- because they're just angry,  
9 right?

10 THE WITNESS: They certainly could.  
11 Anyone can sue, that -- the real question is would  
12 they have a claim that would survive a motion to  
13 dismiss.

14 COUNCIL PRESIDENT PRO TEM CONYERS:  
15 Right. Okay, thank you

16 COUNCIL PRESIDENT COCKREL: Good  
17 morning, Dean Wu. I just have one question for you.

18 Earlier -- one of your earlier  
19 comments, you mentioned that even in a scenario where  
20 it could be perceived that the City Council is not  
21 the client, that the Law Department would still have  
22 specific legal responsibilities to the Council. Is  
23 that -- am I summing it up correctly?

24 THE WITNESS: Yes. That -- that's  
25 very succinctly put. Much more so than when I first

1           stated it.

2                   COUNCIL PRESIDENT COCKREL:  So, based  
3           on your understanding of what you've read in the  
4           media and the documents and I'm sure Mr. Goodman has  
5           shared with you about the motion that was prepared by  
6           Attorney Stefani and the excerpts of the text  
7           messages included therein, all of which suggested  
8           that the Mayor and the Mayor's now former chief of  
9           staff may have lied under oath, do you feel -- is it  
10          your opinion that the Law Department had an  
11          obligation to share that information with Council?

12                   THE WITNESS:  As I said, I've looked  
13          at possible reforms on a forward looking basis, and  
14          what could be changed.  I really haven't delved into  
15          my view of whether the attorneys in this particular  
16          matter breached the duties that they had.  You had a  
17          prior witness on that.  So I would decline to answer.  
18          You could draw your own conclusions.

19                   COUNCIL PRESIDENT COCKREL:  Okay.  
20          Well, I guess since you have had a chance to review  
21          the specific documents in connection with this case,  
22          if a -- hypothetically, if a similar scenario had  
23          occurred, in your knowledge and in your experience,  
24          do you believe that a law department hypothetically  
25          in a hypothetical situation like that, would have had

1 an obligation to share that information with a city  
2 legislative branch?

3 THE WITNESS: To share which  
4 information; you mean the confidentiality? Yes,  
5 confidentiality -- especially if it were a subject of  
6 extensive discussion would be a material term, and in  
7 my view, all material terms of settlements,  
8 especially in cases of a magnitude that passed a  
9 certain threshold, ought to be presented to council.

10 COUNCIL PRESIDENT COCKREL: Okay.

11 THE WITNESS: Otherwise, the council  
12 is not making its decision with all of the  
13 information it needs. So, yes, if the situation were  
14 to arise again, and there were a discussion between  
15 the plaintiffs lawyers and the defense counsel  
16 representing the city that involving bargaining over  
17 confidentiality and the confidentiality caused a  
18 change in the valuation of the case, which would  
19 indicate it is certainly material, yes, that should  
20 be brought to the attention of this body.

21 COUNCIL PRESIDENT COCKREL: Thank you.

22 Council Member Watson is next.

23 COUNCIL MEMBER WATSON: Thank you very  
24 much, Mr. President. Good morning again, Dean Wu.

25 I want to kind of refocus the ethics

1 discussion away from the executive branch to the  
2 legislative branch (inaudible) checks and balance  
3 going on that we might not be here now. Do you  
4 understand what I'm saying? Checks and balances  
5 should be in place so we have, for example, a  
6 standard of conduct is included in the City Charter  
7 that says the use of public office for private gain  
8 is prohibited. The City Council should implement  
9 this prohibition by ordinance consistent with state  
10 law.

11 If, in fact, any element of what has  
12 transpired with this case can be constituted as -- or  
13 documented as public office for private gain, and  
14 that is an outcome of these public hearings, then it  
15 would be incumbent upon this body to move toward  
16 forfeiture, which is also identified in the City  
17 Charter; the position of an elected city officer or  
18 an appointee shall be forfeited if he or she  
19 (inaudible) at any time qualification required by law  
20 or the Charter; (b) violates any provision of the  
21 Charter, punishable by forfeiture, including using  
22 public office for private gain; or (c) is convicted  
23 of a felony while holding the office or appointment.

24 There's been a lot of media attention  
25 given to that (c), convicted of a felony. But almost

1 no discussion of the violation of any provision of  
2 this Charter, punishable for forfeiture. The  
3 standards of conduct outlined in the City Charter  
4 clearly says that using public office for private  
5 gain is prohibited.

6 One would make a good case for a  
7 confidential agreement which blocks the legislative  
8 body during the approval of the settlement -- even  
9 the knowledge of text messages is a using public  
10 office for private gain. Could you please comment?

11 THE WITNESS: I really don't have a  
12 view on that legal conclusion, so I think you  
13 certainly have set forth a number of provisions and I  
14 will leave it to this body to opine on that.

15 COUNCIL MEMBER WATSON: Well, if -- if  
16 the Council at the conclusion of this set of hearings  
17 that we've been doing this week, comes -- the outcome  
18 -- irrefutable in terms of using public office for  
19 private gain and then does not step up to exercising  
20 the power of the office -- call for forfeiture if, in  
21 fact, its concluded that there has been violations  
22 punishable by forfeiture, then would not the Council  
23 be particularly guilty of ethics offenses by not  
24 upholding a provision of our City Charter approved by  
25 the citizens?

1 THE WITNESS: I -- I actually have not  
2 thought about that question. It would seem that  
3 typically, governmental bodies are expected to carry  
4 out their duties.

5 COUNCIL MEMBER WATSON: Thank you.  
6 Thank you, Mr. President.

7 COUNCIL PRESIDENT COCKREL: President  
8 Pro Tem.

9 COUNCIL PRESIDENT PRO TEM CONYERS:  
10 Yes. Thank you.

11 Dean Wu, it was talked about in one of  
12 Council Member Cockrel's -- Mr. President's question  
13 as related to confidentiality agreements, and you  
14 stated that we should be told about them, and I  
15 thought that was what confidentiality agreements  
16 meant, that they weren't talked about -- didn't know  
17 about them because they were confidential between an  
18 attorney and their client and a party's involved. Do  
19 you think that these things should be -- when they're  
20 -- when the Law Department comes to talk to us about  
21 it -- the lawyer yesterday suggested that it should  
22 be in a closed session because of the confidentiality  
23 part and the people involved. Do you think that it  
24 should be in a closed -- do you agree with her that  
25 it should be in a closed session, or should it be in

1 an open session?

2 THE WITNESS: It certainly should be  
3 in a closed session.

4 COUNCIL PRESIDENT PRO TEM CONYERS:  
5 Okay. You stated that the confidentiality agreement  
6 changed the valuation of the case, it -- and it was  
7 provided to Council -- in this case, we owed after  
8 the jury trial \$8.5 million with \$1,000.00 a day  
9 interest accruing and we offered the plaintiffs \$7.3  
10 and \$7.9. Based on these facts, do you think the  
11 confidentiality agreement changed the valuation of  
12 the case?

13 THE WITNESS: As -- as I said, I  
14 wasn't speaking about this particular matter. I was  
15 speaking if another case arose where the case was  
16 valued by Corporation Counsel -- I'm not talking  
17 about the actual size of the judgment, but the  
18 valuation internally. And after the addition of a  
19 confidentiality provision, the valuation changed,  
20 that would, I think, be reasonably regarded as  
21 material. The confidentiality provision would be  
22 thought of as material.

23 COUNCIL PRESIDENT PRO TEM CONYERS:  
24 And could you give us, maybe in a memo or write-up  
25 that you can give to us later, some instances where

1           you think that we should have a closed session as it  
2           relates to certain types of confidentiality  
3           agreements?

4                   THE WITNESS:   Sure.   In fact, I -- I  
5           think I can do that now.   Any --

6                   COUNCIL PRESIDENT PRO TEM CONYERS:  
7           Okay.

8                   THE WITNESS:   -- discussion of pending  
9           litigation should be in -- in closed session.   That  
10          would be the, I believe, standard practice.

11                   COUNCIL PRESIDENT PRO TEM CONYERS:  
12          And what about when you're in settlement?   When they  
13          come to us on different things; maybe like in this  
14          case when they came to us to say this is the amount  
15          of the settlement.   Do you think that that should  
16          have been in a closed session so we could have asked  
17          why is it this amount; why not a lower amount; what  
18          changed in between that time?   Should that have been  
19          in a closed session also?

20                   THE WITNESS:   Yes.   When I saw any  
21          litigation that's pending, I mean even if a jury  
22          verdict has come in, if there is the possibility of  
23          appeal, if that's being contemplated, the case would  
24          still be pending, yes.

25                   COUNCIL PRESIDENT PRO TEM CONYERS:

1 Okay, thank you.

2 COUNCIL PRESIDENT COCKREL: Council  
3 Member Kenyatta.

4 COUNCIL MEMBER KENYATTA: Thank you,  
5 Mr. President, and thank you again, Mr. Wu.

6 Is it in -- your -- your understanding  
7 that -- that any circumstances, information, motions  
8 that brings about the settlement of a case, whether  
9 it changes the evaluation, the amount of the money,  
10 or whatever, but there's information that is brought  
11 to attorneys that can, in fact, bring a settlement to  
12 the case; however, if that information is brought  
13 public at some later point could, in fact, bring  
14 about liability, embarrassment, or some form of  
15 jeopardy to the body that is settling the case, that  
16 the -- the body should have been informed of that  
17 piece of information, whether it was confidentially  
18 revealed, private -- privately in closed session or  
19 not?

20 THE WITNESS: Yes. That's a good  
21 question. It is almost always the case, when civil  
22 litigation settles, that one or another party will  
23 wish for the matter to be confidential, and by  
24 confidential, typically that means the parties will  
25 know, the attorneys will know, the court will know,

1 but that third parties will not. So it couldn't be  
2 discussed with the press; it couldn't even be  
3 discussed with friends and so on. That's common  
4 whether you're talking about settlement of product  
5 liability cases or employment discrimination cases;  
6 almost any type of case. And usually when that  
7 occurs, the lawyers for both sides will know, and  
8 their clients will know, and indeed, there are cases  
9 in which lawyers have attempted to withhold  
10 information from clients, and executed  
11 confidentiality agreements as between the lawyers.  
12 That is clearly improper. The difference with the  
13 government and with this body is there is some  
14 ambiguity, some arguable ambiguity as to who the  
15 client is. You know, it's -- it's rare to have --  
16 and actually I shouldn't say it's rare; it probably  
17 arises in other settings where there's a corporate  
18 client, where the client is not a single human being  
19 or set of human beings, but rather is a an entity,  
20 and multiple entities that may have divisions and  
21 subdivisions. So inside a company, for example, if a  
22 case settles and it's confidential, it may well be  
23 that not every employee knows about that. It's  
24 likely not every employee knows about it. Some  
25 employees might even have been involved in some way

1 and not know about it.

2 So, the -- let me make this -- let's  
3 say a car company settles a product liability case  
4 involving seatbelts and whether they're defective,  
5 and a particular engineer at that company worked on  
6 seatbelts. That engineer may well not know anything  
7 about how the case has been settled. But it would be  
8 very unusual for nobody at the client who is part of  
9 a control group of that company to not know the terms  
10 that were involved.

11 COUNCIL MEMBER KENYATTA: And is it  
12 then the responsibility of the lawyers who have all  
13 of the information as relates to the -- the -- the  
14 terms of settlement to seek the closed session to  
15 inform clients that this is why we have settled this  
16 case. That this information that is out there;  
17 however, we have contained it. Hopefully it will not  
18 come back, but this is what we were able to do.  
19 There are other employees who have this information,  
20 but they have been sworn to confidentiality, so that  
21 you know that this information is there, and you've  
22 been able to -- I think the term was used yesterday,  
23 to -- to shut it down. That -- what was it?

24 COUNCIL PRESIDENT PRO TEM CONYERS:  
25 That's what she said.

1 COUNCIL MEMBER KENYATTA: Okay. To  
2 shut it down. That we have been able to do this;  
3 however, we do want you to know that this is what it  
4 was. This is what possibly could come back, but this  
5 is why we settled. It -- it is the responsibility of  
6 the attorneys to seek that closed session so that  
7 they can inform their clients, would you say?

8 THE WITNESS: Normally, attorneys  
9 would be expected to inform their clients of not just  
10 the material terms of any settlement, but if there  
11 are any other factors that the client should be aware  
12 of.

13 COUNCIL MEMBER KENYATTA: Thank you.

14 COUNCIL PRESIDENT COCKREL: President  
15 Pro Tem.

16 COUNCIL PRESIDENT PRO TEM CONYERS:  
17 Thank you. I -- I think that you maybe can help me  
18 with this. I think that some of the lawyers seem to  
19 have a problem or not understand who exactly their  
20 lawyers were in this case, and so I think that there  
21 is -- needs to be some clarity of when certain cases  
22 arise, that they understand who their clients are and  
23 who they have fiduciary duty to. Do you think that -  
24 - believe that also?

25 THE WITNESS: I --

1 COUNCIL PRESIDENT PRO TEM CONYERS:

2 Because it doesn't appear that -- some of them  
3 thought they were working for us; some of them  
4 thought they were working for all the residents of  
5 the city of Detroit, but not specifically City  
6 Council members. Can you elaborate on what you think  
7 about that?

8 THE WITNESS: I think you're  
9 absolutely right. That above all, whatever the  
10 decision is, that it be clear.

11 COUNCIL PRESIDENT PRO TEM CONYERS: I  
12 know one of the things that we talked about yesterday  
13 was 6-403 in the Charter, saying that City Council  
14 members have to approve all lawsuits. But isn't  
15 there cases, such as in the tobacco industry, and I  
16 asked the young lady yesterday, where some of the  
17 parties may agree to settle and some of the parties  
18 may not agree to settle, and that pre -- that's  
19 perfectly okay, right?

20 THE WITNESS: Yes. There are in class  
21 actions an elaborate set of rules about what's called  
22 opting-out. So --

23 COUNCIL PRESIDENT PRO TEM CONYERS:

24 And so that -- could that be what they meant by opt-  
25 out, opt-in the other day, because I wasn't too sure

1 of that.

2 THE WITNESS: Right. To give you an  
3 example, let's say --

4 MR. GOODMAN: Excuse me, Mr.  
5 President, may I -- President Pro Tem, just so --  
6 because Dean wasn't here, I'm not sure he understands  
7 what you're referring to when you said opt-in and --

8 COUNCIL PRESIDENT PRO TEM CONYERS:  
9 But he's explaining to me what happened; what -- what  
10 it means by opt-in and opt-out.

11 MR. GOODMAN: Okay.

12 THE WITNESS: Okay. I -- I don't know  
13 if this was the case that was discussed, but I'll  
14 give you just a more general example, using what you  
15 mentioned.

16 So, if there's a tobacco settlement --

17 COUNCIL PRESIDENT PRO TEM CONYERS:  
18 Yes.

19 THE WITNESS: -- and the -- it's a  
20 settlement of a class action, and the class is  
21 everybody who smoked X brand between 1945 and 1985.  
22 Typically, the notice would be published in  
23 newspaper, in this case, nationwide, and a mailing  
24 would go out; you've all received those mailings. In  
25 the fine print it says in re: whatever -- tobacco

1 class action, it informs you, we understand you're a  
2 member of the plaintiff class, and you will be a  
3 member of the plaintiff class even if you didn't know  
4 it; even if you didn't do anything, because the  
5 lawyers who represent the named plaintiffs have  
6 gotten the class certified, and the court has said  
7 okay, you represent everyone who smoked brand X  
8 between 1945 and 1985.

9 COUNCIL PRESIDENT PRO TEM CONYERS:

10 Mm-hmm.

11 THE WITNESS: And so you may not even  
12 know this lawsuit is pending --

13 COUNCIL PRESIDENT PRO TEM CONYERS:

14 Yeah.

15 THE WITNESS: And somewhere in that  
16 fine print it will say you can opt-out. If you want  
17 to not accept the class action settlement, which may  
18 entitle you to \$50.00 or some, you know, modest sum,  
19 and you want to pursue your own claim against that  
20 company, you can still do it.

21 Now, that may have nothing to do with  
22 what you were talking about yesterday.

23 COUNCIL PRESIDENT PRO TEM CONYERS:

24 Yeah, I think that's probably what they meant. Can  
25 you explain what opt-in means?

1 THE WITNESS: Sure. You -- you can  
2 set up systems like this, either to have a default  
3 opt-out or opt-in. So typically it's set up so if  
4 you want out of the class, you have say I want out.

5 COUNCIL PRESIDENT PRO TEM CONYERS:  
6 Mm-hmm.

7 THE WITNESS: You can set it up as an  
8 opt-in system as well, where you're presumed to not  
9 be part of the class unless you raise your hand and  
10 appear and intervene and say I want in.

11 COUNCIL PRESIDENT PRO TEM CONYERS:  
12 Mm-hmm. Okay. My last question is, as it relates to  
13 confidentiality agreements; if it's done -- if there  
14 -- if we have an open session where the lawyers come  
15 and tell us what's going on, is there a possibility  
16 of a breach now that it's out there for the world to  
17 see that we didn't have a closed session, so now  
18 everybody's business is being told or different  
19 things that they may not have wanted us to know as  
20 you've explained, would that present any problem for  
21 us at the City, for us as Council members, or just --  
22 or someone suing the City because -- extra, because  
23 of the fact that they had these confidentiality parts  
24 in place and we didn't do it in a closed session to  
25 protect the parties' interests?

1 THE WITNESS: You -- you're asking if  
2 a matter had been settled with the provision  
3 requiring confidentiality and then one of the lawyers  
4 came at an open session with the public sitting here,  
5 as they are today, discussed the matter, would that  
6 breach your obligations? Certainly, yes.

7 COUNCIL PRESIDENT PRO TEM CONYERS:  
8 Okay, thank you very much.

9 COUNCIL PRESIDENT COCKREL: Council  
10 Member Jones.

11 COUNCIL MEMBER JONES: Thank you.

12 My question to you, and I'm looking at  
13 several documents in the spiral booklet, and  
14 referring to the document behind spiral five, which  
15 was the Notice of Rejection of Proposed Settlement --  
16 October 17th, 2007 facilitation, and the overhead of  
17 it is State of Michigan in the Circuit Court for the  
18 County of Wayne, and it has all the information.  
19 Under normal practice, is that something that should  
20 be filed with the court?

21 THE WITNESS: A -- a notice of  
22 rejection of settlement arising out of a court-  
23 ordered facilitation, I -- I believe the answer would  
24 be yes.

25 COUNCIL MEMBER WATSON: Thank you.

1 Thank you, Mr. President.

2 COUNCIL PRESIDENT COCKREL: Council  
3 Member Collins?

4 COUNCIL MEMBER COLLINS: Thank you,  
5 Mr. President. Good morning --

6 I don't know if anybody asked you this  
7 specific question, but there was a settlement that  
8 was rejected by the Mayor, and a second settlement  
9 drafted. The first one was approved by City Council,  
10 City Council did not know there was a second one. It  
11 never came to Council for approval. (Inaudible) so  
12 was the second one valid?

13 THE WITNESS: I don't have a view on  
14 that. I -- I haven't looked in detail at the issues  
15 surrounding this particular case.

16 COUNCIL MEMBER COLLINS: Okay. Let me  
17 ask you this; if a body approves a contract and that  
18 contract is -- is then rejected, does that first  
19 approval extend to any contract (inaudible) on that  
20 issue? (Inaudible) I mean it just seems to me that  
21 if one -- if the first one is rejected (inaudible)  
22 and that new approval would be necessary for new  
23 proposals --

24 THE WITNESS: -- proposal has been  
25 rejected, it can't be accepted after that. I don't

1 know, however, if the basic contract law principles  
2 could be extended into the governmental setting  
3 without some modification.

4 COUNCIL MEMBER COLLINS: (Inaudible)

5 THE WITNESS: It -- it is a contract,  
6 yes. Although here -- I believe to -- to be very  
7 precise about it, the Council is approving rather  
8 than accepting.

9 COUNCIL MEMBER COLLINS: Somebody's  
10 got a Charter; what does it say?

11 COUNCIL MEMBER WATSON: It says that  
12 all settlements must be approved by the City Council.

13 COUNCIL MEMBER COLLINS: Okay. So,  
14 going back to my first question. The Council  
15 approved the settlement; that settlement later is  
16 thrown out. Does that mean that any other settlement  
17 that comes afterwards is deemed approved by Council  
18 because of the first settlement?

19 THE WITNESS: Well, speaking  
20 prospectively, in terms of the better practice and  
21 what should be done in the future, it would seem far  
22 better to have a clear understanding with Corporation  
23 Counsel that if a settlement was approved, but it's  
24 later modified, that this body needs to review it  
25 again, or if a settlement is rejected and there's an

1 interest in accepting it later, that that ought to be  
2 brought back before this body.

3 COUNCIL MEMBER COLLINS: It should be

4 --

5 THE WITNESS: And -- and certainly  
6 moving forward, you could clarify that. And I would  
7 imagine that Corporation Counsel already is pretty  
8 clear on that at this point.

9 COUNCIL MEMBER COLLINS: Well, it  
10 should have been clear from the beginning. What the  
11 Charter says, Section 6-403, civil litigation, "No  
12 civil litigation of the City may be settled without  
13 the consent of the City Council." So there were two  
14 settlements. The second settlement did not receive  
15 the consent of City Council --

16 COUNCIL MEMBER COCKREL: That's right.

17 COUNCIL MEMBER COLLINS: -- because  
18 the City Council did not know there was a settlement.  
19 So, would that not make that second settlement  
20 invalid, or would you -- look at -- at that -- that  
21 specific question (inaudible) because truthfully \$8.4  
22 million dollars could be on that answer. You know,  
23 whether a settlement is valid that Council never knew  
24 that settle -- that there's a second settlement  
25 (inaudible) question, isn't it?

1 THE WITNESS: And it's a question that  
2 likely would have to be litigated.

3 COUNCIL MEMBER COLLINS: It seems to  
4 me, Dean Wu, that City Council would have to have a  
5 lot of faith and trust in corporate counsel, if we  
6 were to have to take them to court and litigate  
7 whether or not we give consent to something.

8 THE WITNESS: That -- that's right.  
9 It would be an unfortunate position for one branch of  
10 the government to be litigating something against  
11 another branch of the government.

12 COUNCIL MEMBER COLLINS: Well, that's  
13 not another branch. Corporate counsel is not a  
14 branch. They're employees. Appointed, but they're  
15 employees, and if we can't trust them to give us  
16 proper forms or -- or proper information, it seems to  
17 be they would be totally unnecessary.

18 Thank you, sir.

19 THE WITNESS: Thank you.

20 COUNCIL PRESIDENT COCKREL: All right.  
21 I've just been informed by Mr. Goodman that our next  
22 expert witness is under some time constraints. I do  
23 have three other Council members that had questions,  
24 so if you could keep that in mind; maybe just ask one  
25 question if it's not absolutely critical to these

1 proceedings, because we do want to get to Mr.  
2 Edwards, and keep in mind also that -- Bill what time  
3 are you envisioning us dealing with Mr. Johnson?  
4 What time is he going to be here?

5 MR. GOODMAN: He will be here at  
6 11:30.

7 COUNCIL PRESIDENT COCKREL: All right.  
8 And we know that's going -- that's going to take some  
9 time.

10 MR. GOODMAN: Yes, I --

11 COUNCIL PRESIDENT COCKREL: We might  
12 have to break for lunch at some point and then come  
13 back -- so -- President Pro Tem is next.

14 COUNCIL PRESIDENT PRO TEM CONYERS:  
15 Thank you.

16 Dean Wu, could you ask -- answer this  
17 question for me; that if a judge makes an order, and  
18 orders some documents, and tells you the constraints  
19 of which the documents are to be sent to him, and  
20 then for some reason you don't get the documents, and  
21 the judge says order the documents again, does that  
22 mean you don't listen to the instructions that were  
23 given for ordering the documents in the first place,  
24 or do you just order the documents and disregard what  
25 the judge said in the other -- in ordering the

1 documents in the beginning?

2 Do those instructions follow the  
3 second time he tells you to order them?

4 THE WITNESS: I --

5 COUNCIL PRESIDENT PRO TEM CONYERS: or  
6 if he doesn't tell you in the same manner that he  
7 told you the first time, do you just do whatever you  
8 want the second time?

9 THE WITNESS: I would think that you  
10 would do your best to comply with any judicial order.

11 I -- I did want to just amend my last  
12 answer, by the way. I -- as I reflect on it,  
13 actually, I believe the Council member is correct.  
14 It wouldn't be one branch of government litigating  
15 against another. If you wished to undo a settlement,  
16 presumably you would seek assistance of special  
17 counsel to have a settlement set aside. There are  
18 provisions that, though rarely used, there -- it is  
19 not unheard of to seek to have a settlement set  
20 aside.

21 COUNCIL MEMBER COLLINS: Thank you.

22 COUNCIL PRESIDENT PRO TEM CONYERS:  
23 And when lawyers usually come and go for settlement  
24 agreements, do they usually have the documents  
25 completely written up, or do they come with just a

1 memorandum to just tell you all the particulars that  
2 they include to put in it and then just say okay, and  
3 after talking with their clients say okay, that's  
4 fine, we'll settle, and then they go type something  
5 up and then, you know, they agree to it and the  
6 people settle; is that --

7 THE WITNESS: There -- there's a very  
8 wide range of practices. Some attorneys who handle  
9 particular types of matters again, again, and again,  
10 and they represent the insurance carrier, they may  
11 have a standard form, and that form may contain a  
12 release of liability, a confidentiality provision,  
13 and have a blank for the amount of money, and they  
14 may indeed have that at the ready, and they could say  
15 to the plaintiff's counsel, well, here's our  
16 settlement offer, and they would just pull it out of  
17 their pocket; they would have it there. It's also  
18 true that in many cases lawyers will have a  
19 conversation, and the lawyers will then each say  
20 okay, well we have a settlement in principle, or we  
21 have a term sheet that we've written up that covers  
22 the basics, why don't we go back and discuss this  
23 with our clients and we will formalize it in a  
24 writing happens, and also from time-to-time, lawyers  
25 don't have full authority from their clients. So

1 it's not uncommon for two lawyers to have a  
2 conversation that goes something like this; one  
3 lawyer says the other this sounds good, I'll  
4 recommend it to my client, but you understand I still  
5 have to go back to the client. This is a client who  
6 I think is reasonable and I'm prepared to recommend  
7 it. And then you might say okay, I'll recommend it  
8 to my client as well. And though that is commonly  
9 done, every attorney has the experience of being  
10 embarrassed because their own client turns down the  
11 offer after a conversation like that. So there's --  
12 there's a wide range. Sometimes people have the  
13 document right there, sometimes they don't, sometimes  
14 it's oral, it's follow-up. I don't think there is  
15 any set way to do that.

16 COUNCIL PRESIDENT PRO TEM CONYERS:

17 Thank you. Thank you, Mr. President.

18 COUNCIL PRESIDENT COCKREL: Council

19 Member Kenyatta.

20 COUNCIL MEMBER KENYATTA: Thank you,

21 Mr. President, and I'll try to let this be final.

22 Vice President Pro Tem raised an issue  
23 that I think is of great concern as it relates to who  
24 was represented at the meeting on the -- October the  
25 17th at 6:45 in Mr. Stefani's office. According to

1 Mr. McCargo's written statement, during that meeting  
2 the attorneys representing the parties, and there  
3 were attorneys there representing the City of  
4 Detroit, attorneys representing the Mayor  
5 specifically, signed a written proposal for  
6 settlement with an opt-in provision. I did not  
7 consider the document a final binding settlement  
8 agreement. By its terms it would only become  
9 effective if all the parties complied with the opt-in  
10 provision in writing within specific time period.  
11 The opt-in provision allowed each party an  
12 opportunity and time to raise additional issues,  
13 accept or reject, modify the proposed terms or  
14 request further facilitation. This was on the 17th,  
15 at -- at which time the call was made and said that  
16 we have a settlement. Even though this clearly says  
17 that it's not final and it's not binding, we were  
18 presented with a settlement on the 18th without any  
19 knowledge of an opt-in provision that could be --  
20 that had to be done in writing within a specific  
21 time.

22 Do you feel, again, that -- that based  
23 on what the Vice President Pro Tem raised about this  
24 opt-in, that all parties should have been informed  
25 that there was an opt-in provision, that if there

1 were some problems with raising additional issues,  
2 that you had an opportunity to accept or reject  
3 within a specific time? Because this was not  
4 approved on the 18th. It was presented on the 18th.  
5 And it was then forward on to the formal with that  
6 recommendation. So, was there time to still inform  
7 Council that there was -- that this is what's in this  
8 agreement, and you can opt-in or opt-out of it; that  
9 -- do you feel that we were properly represented --  
10 there was one party that opt-out, but the other  
11 parties didn't even know they could opt-in or out.  
12 Do you feel that Council was --

13 THE WITNESS: Rather than speak to  
14 this specific case, let me talk about the future and  
15 other practices you might adopt. One of them might  
16 be to ask as -- to list as one of the factors that  
17 would cause a flag to go up complex opt-in/opt-out  
18 rules, so that any settlement that was contingent on  
19 all parties being in it or none, that could be a  
20 factor that you would list as another factor you  
21 would routinely expect Corporation Counsel to make  
22 you aware of.

23 COUNCIL MEMBER KENYATTA: I -- I think  
24 I got you. Thank you. Thank you, Mr. President.

25 COUNCIL PRESIDENT COCKREL: Council

1 Member Cockrel.

2 COUNCIL MEMBER COCKREL: Thank you,  
3 Mr. President.

4 Again, the reason, Dean Wu, I asked  
5 you to take a look at tab four (inaudible) we've all  
6 been asking, because frankly and -- and somebody said  
7 at one point, this entire (inaudible) appears to be  
8 this entire constellation of lawyers who are  
9 functioning as Mayor Kilpatrick's quote/unquote  
10 "legal bodyguards" as opposed to the bodyguards, if  
11 you will, of the city of Detroit; that -- that is a  
12 conclusion (inaudible) but the fact remains that the  
13 documents that were provided to us were narrowly --  
14 were narrowly confined to the dollar value of the  
15 settlement and unfortunately, and this is common  
16 language (inaudible) my office in terms of the  
17 resolutions that we -- that we pass, and this in my  
18 opinion has to be altered and altered dramatically.

19 We said in -- and we (inaudible) Law  
20 Department saying that this matter -- a settlement  
21 has been made, blah, blah, blah, that -- that said  
22 amount be paid upon receipt of the properly-executed  
23 release and settlement agreement -- Wayne County  
24 Circuit Court and approved by the City's Law  
25 Department. So, we essentially, on the basis of

1 trust, historically have given the Law Department the  
2 power to determine the final shape of the written  
3 settlement that's entered in court, and I think that  
4 -- and -- and what the Charter says is we have to  
5 consent to settlement. These resolutions the way  
6 they're crafted have us consent to the settlement,  
7 frequently on narrow terms, the dollars involved.  
8 This is why I requested that you take a very close  
9 look at what's in here and give us some  
10 recommendations as to ways that we could set up a  
11 better check and balances others have said, over the  
12 -- the -- the allocation and the spending of our tax  
13 dollars to settle cases.

14 But in this case, this was, you know,  
15 a conspiracy that started apparently back in 2004, by  
16 this whole constellation of lawyers to insure that,  
17 as Mayor Kilpatrick's legal bodyguards, this case  
18 would get settled as quietly as possible. And it  
19 blew up. Thank you.

20 COUNCIL PRESIDENT COCKREL: Council  
21 Member Watson.

22 COUNCIL MEMBER WATSON: Thank you, Mr.  
23 President.

24 I just want to reinforce what Council  
25 Member Collins said. From the Charter, page 21, "No

1 civil litigation of the City may be settled without  
2 the consent of City Council." That's it. Doesn't  
3 matter who writes what. Doesn't matter what hired  
4 hands do what in terms of documents. No civil  
5 litigation of the City may be settled without the  
6 consent of the City Council. That can't be brokered  
7 away, resolved away. It can't be ignored. It can't  
8 be set aside. It can't be repealed, rejected by the  
9 -- by the Mayor on October 27th, and suddenly  
10 reappear November 1st as if -- as if there had been  
11 some middle of the night meeting by Council.  
12 (Inaudible) there was no meeting, no vote, no second  
13 (inaudible) of a second settlement, and the Charter  
14 clearly says no civil litigation of the City may be  
15 settled without the consent of the City Council. So  
16 that second middle of the night business that  
17 happened without Council review or vote is null and  
18 void. It does not -- it -- it has no formal legal  
19 standing or protection, so the \$8.4 million dollars  
20 that's been paid out without a legal (inaudible).  
21 It's been paid out and -- and -- in a direct  
22 contradiction to the City Charter, which says you may  
23 not settle without City Council approval.  
24 So, the -- it is not -- just something  
25 we need to address with the Law Department, it's

1 something we need to address with some lawyers who  
2 are bound to abide by the law. Thank you, Mr.  
3 President.

4 COUNCIL PRESIDENT COCKREL: Seeing no  
5 further questions, Mr. Goodman, if you have any  
6 closing questions or comments, you are free to do  
7 that. If not, we can excuse the witness.

8 MR. GOODMAN: I have no questions.  
9 Just a comment, Mr. President.

10 I want to thank Dean We for his pro  
11 bono service so far, and I guess quite a bit of work  
12 to follow in the future. Thank you very much, Dean  
13 Wu, on my own behalf, and I hope -- I'm sure I speak  
14 for my client -- I want to thank you for your  
15 services, and wish you well in the future.

16 MR. WU: Thank you.

17 COUNCIL PRESIDENT COCKREL: Council  
18 Member Cockrel?

19 COUNCIL MEMBER COCKREL: Yeah. I  
20 would also like to thank you, Dean Wu, for your  
21 extraordinary service on the Wayne State University  
22 Law School -- it's a real loss. We wish you the  
23 best, but it is a true loss to this legal community -

24 -

25 MR. WU: Thank you --

1 COUNCIL MEMBER WATSON: Thank you for  
2 graduating my baby last year --

3 MR. WU: You're welcome; thank you.

4 COUNCIL MEMBER WATSON: From the  
5 bottom of my heart, I thank you.

6 COUNCIL PRESIDENT COCKREL: Thank you  
7 very much, Dean Wu.

8 Are you ready for our next witness?

9 MR. GOODMAN: Yes, we are. I have --  
10 You have to take an oath there; all  
11 right?

12 COUNCIL PRESIDENT COCKREL: Good  
13 morning.

14 COURT REPORTER: Sir, do you solemnly  
15 swear or affirm to tell the truth, the whole truth,  
16 and nothing but the truth, so help you God?

17 MR. EDWARDS: I do.

18 COUNCIL PRESIDENT COCKREL: Mr.  
19 Edwards, welcome.

20 THE WITNESS: Good morning.

21 COUNCIL PRESIDENT COCKREL: Good  
22 morning. It's always a pleasure to be in your  
23 presence.

24 THE WITNESS: Well, I am happy to be  
25 here. As I told Mr. Goodman, in a lot of ways

1           against my personal interest in the legal community,  
2           but certainly discharging what I feel to be my public  
3           and -- interest and certainly my interest as a  
4           citizen of this city for 60 years. I have raised six  
5           children and ten grandchildren -- what I consider a  
6           Constitutional crisis.

7                       MR. GOODMAN: Yes. And I -- I as well  
8           want to thank you, Mr. Edwards, and -- and as a  
9           phrase that has been used several times during these  
10          proceedings, for your many years of service to this  
11          community as well.

12                       CARL EDWARDS

13          DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

14                       EXAMINATION

15          BY MR. GOODMAN:

16          Q       I guess we have a record, so for the record please  
17                   state your name.

18          A       Carl R. Edwards.

19          Q       And you're well known to this body, but for how many  
20                   years have you practiced law in this community?

21          A       Thirty-three years.

22          Q       And what -- in the course of that work you've held a  
23                   number of positions, and engaged in a number of  
24                   responsibilities with regard to community service.  
25                   Could you just outline a few of them, including the

1 positions you've held in a variety of bar  
2 associations?

3 A Yes. I am past president of the Michigan Trial  
4 Lawyers Association, 1987 to 1988. The first African  
5 American president -- I served this country on a  
6 legal delegation that took the Bill of Rights to the  
7 former Soviet Union and China in 1988. All of my  
8 life, I have fought for human rights and equal  
9 justice, beginning at Wayne Law School. I was -- I  
10 represented the -- many citizens in this city. Among  
11 those include the attempt -- I was lead counsel to  
12 save Detroit General Hospital. I was lead counsel to  
13 save the Detroit Human Rights -- lead counsel to stop  
14 the privatization of city services, and we have -- my  
15 office was advised or at least contacted on this  
16 matter before Mr. McCargo to represent the Mayor. We  
17 declined.

18 Q I would like first of all to ask -- I'm going to  
19 proceed a little bit in a leading fashion. You for  
20 many years have been a -- a leader and very active in  
21 the civil rights bar of this city; is that a fair  
22 statement?

23 A That's true. We -- we have some landmark cases in  
24 this community --

25 Q And -- I'm sorry.

1 A That are being followed throughout this nation.

2 Q And as well, you have represented plaintiffs and  
3 clients who have sued and -- successfully, the City  
4 of Detroit?

5 A Yes.

6 Q And in that regard you're familiar -- you are aware  
7 of the fact that this particular investigation  
8 involves the settlement of the Brown, Nelthrope, and  
9 Harris cases, whistleblower cases, involving members  
10 of the Detroit Police Department who have brought  
11 actions against the City of Detroit and the City of  
12 Detroit Police Department for having engaged in  
13 certain employment actions because of those officers'  
14 investigations of matters surrounding the Mayor and  
15 his chief of staff and others as well, as his  
16 Executive Protection Unit. Do you have any matters  
17 with -- that could be considered a potential conflict  
18 of interest or at least matters in which you are  
19 involved that you feel you need to disclose to this  
20 body at this time?

21 A Yes. Let me just say that in addition to  
22 everything else I've said, practically every lawyer  
23 that represent -- that has represented the City and  
24 appeared before you, I have a long history with most  
25 of those lawyers in a professional capacity, and a

1 deep respect for them, including your current head of  
2 your Law Department. It is dif -- it is almost  
3 impossible to be a lawyer in this community 33 years  
4 and not know John Johnson, Sam McCargo, William  
5 Copeland. In fact, Ms. Osamuede, I represented her  
6 father, Reverend Colbert, and her brothers, years  
7 ago. I have represented many police officers. I  
8 have filed lawsuits on behalf of citizens who've been  
9 victims of police misconduct and brutality. I have  
10 obtained seven-figure verdicts in those cases and  
11 settlements. And so, it -- it somewhat regretful for  
12 me to be here to talk about this case in its present  
13 form, because I have such a deep respect for the  
14 lawyers who appear before you.

15 Q Before we get into the facts and circumstances of  
16 this case, are there any -- is there -- are there any  
17 other general comments or disclosures, or anything  
18 else that you would like --

19 A I should -- I should disclose that I was consulted  
20 and I again turned down on the Tamara Green case as  
21 well -- I should disclose that there are several  
22 police officers presently who have consulted me  
23 arising out of these matters.

24 Q Thank you. Now, I have given you a -- a body of  
25 materials to review, and I believe it's the same

1 material that I've given to members of Council for  
2 the last witness, and you have that material with you  
3 here today?

4 A Yes, I've reviewed it.

5 Q And you've reviewed it. You've followed these  
6 proceedings to date; is that correct?

7 A Yes.

8 Q And observed the testimony of virtually all of the  
9 witnesses who've testified, I believe; is that  
10 correct?

11 A Yes.

12 Q In that regard, let me ask you some questions.

13 A Sure.

14 Q And I would start with the issue of the  
15 confidentiality agreement and I think that you're  
16 well aware of the fact and so is the -- the members  
17 of Council, so let's get right into it.

18 A Sure.

19 Q Have you, yourself, settled cases with public bodies,  
20 including the City of Detroit, in which there have  
21 been confidentiality agreements?

22 A For -- for approximately 30 years.

23 Q Have you ever settled a case involving a  
24 confidentiality agreement which has not been a part  
25 of the single settlement agreement and release

1 document?

2 A Hundreds, and which it's never been the case. So the  
3 first answer is yes, hundreds, and it's never been  
4 the case that there was a separate confidentiality  
5 agreement.

6 Q It has always been a unitary document; is that  
7 correct?

8 A Yes.

9 COUNCIL MEMBER COCKREL: In public  
10 cases?

11 THE WITNESS: Yes.

12 BY MR. GOODMAN:

13 Q These have been employment cases, I assume; is that  
14 correct?

15 A Both employment and negligence and police brutality  
16 cases, yes.

17 Q Um --

18 A And in my private practice. We -- it is highly  
19 irregular, and I have never seen a separate  
20 confidentiality agreement.

21 Q In this particular case, Ms. Osamuede testified  
22 yesterday that she was unaware of the particulars of  
23 a particular or even of the existence of a separate  
24 confidentiality agreement, which would be the  
25 agreement found under tab -- I believe tab nine in my

1 spiral book here.

2 A I have it.

3 Q Because she was the attorney, not particularly for  
4 the Mayor, but for the City of Detroit in the -- in  
5 the Brown and Nelthrope case. Is there anything  
6 about her representation, Brown/Nelthrope or Water  
7 Harris, that -- that would suggest to you that she  
8 either did know or should have known of the existence  
9 of this confidentiality agreement?

10 A Let me start with the Michigan Code of Professional  
11 Responsibility, so that someone doesn't say that this  
12 just an opinion of another lawyer. In the preamble  
13 to the Michigan Code of Responsibility, it has  
14 certain terms, and I'll just quote some of them,  
15 because I know we're pressed for time. It says a  
16 lawyer is representative of a client, an officer of  
17 the legal system, and a public citizen having special  
18 responsibility for the quality of justice. As a  
19 representative of clients, a lawyer performs various  
20 functions. As advisor, a lawyer provides a client  
21 with an informed understanding of the client's legal  
22 rights and obligations, and explains the practical  
23 implications period. As advocate, a lawyer zealously  
24 asserts the client's position under the rules of the  
25 adversary system. In all professional functions, a

1 lawyer should be competent, prompt, and diligent. A  
2 lawyer should maintain communication with a client  
3 concerning that representation.

4 Q And that is Rule --

5 A That is the beginning preamble, and if you move to  
6 terminology, it has certain terms that are set out.  
7 One is reasonable or reasonably. When used in  
8 relation to conduct by a lawyer, denotes the conduct  
9 of a reasonably prudent and competent lawyer.  
10 Reasonable belief means when used in reference to a  
11 lawyer, denotes that the lawyer believes the matter  
12 in question, and that the circumstances are such that  
13 the belief is reasonable. And then reasonably should  
14 know, which I think was your question. When used in  
15 reference to a lawyer, denotes that a lawyer of  
16 reasonable prudence and competence would ascertain  
17 the matter in question. That is the responsibility  
18 that is placed upon us. We cannot simply say we did  
19 not know. It is an affirmative obligation for us to  
20 know, and there are consequences when you don't  
21 investigate the facts so that you know, and then you  
22 can reasonably communicate with your client.

23 Q Now, in Ms. Colbert-Osamuede's case, she was, she  
24 says the attorney only for the City in the  
25 Brown/Nelthrope case. In the Harris case, however,

1           you -- you reviewed the documents in this case. Are  
2           you aware of her representation in that case?

3       A     Yes, and it troubles me.

4       Q     And who would -- who did she represent in that case?

5       A     Well, if you look at the settlement agreement, both -  
6           - I believe at tab --

7       Q     Three.

8       A     Yes, three -- three is the initial settlement  
9           agreement, the first one. And you turn to page  
10          three. It has signatures for the parties. The  
11          parties are listed as Mayor Kwame Kilpatrick and it  
12          looks as if by Sam McCargo, and then and Valerie A.  
13          Colbert-Osamuede on behalf of the Mayor. That's the  
14          first settlement agreement. And then you look at  
15          who's representing the City of Detroit, it is by  
16          Valerie A. Colbert-Osamuede. And -- if Ms. Osamuede  
17          has testified that she perceived, as early as 2004,  
18          that she had a conflict of interest, then she was  
19          duty-bound to choose who she was duty-bound to  
20          represent. She could not bind therefore both the  
21          Mayor, in my opinion, and the City of Detroit  
22          simultaneously if she knew she was in conflict of  
23          interest, and a more prudent course would have been  
24          to have someone else represent either the Mayor or  
25          the City of Detroit, but not both. In addition, if

1           you look at the second settlement agreement  
2           concerning Mr. Harris is at tab eight, you turn again  
3           to the last page; Kwame Kilpatrick does not sign this  
4           document, attorney Valerie Colbert-Osamuede signs the  
5           document on behalf of Kwame Kilpatrick and she again,  
6           Valerie A. Colbert-Osamuede signs this document on  
7           behalf of the City of Detroit. That's not prudent,  
8           in my opinion.

9       Q     In your opinions, cutting to the chase a little bit  
10           here, was there an obligation on the part of  
11           Corporation Counsel, the City Law Department, Ms.  
12           Colbert-Osamuede, and Mr. Johnson, to disclose the  
13           existence of this confidentiality agreement to this  
14           body before it sought its approve -- its consent and  
15           approval to the settlement?

16       A     Again, if you go to the Code of Professional  
17           Responsibility, Rule 1.4 on communications: "(A), a  
18           lawyer shall keep a client reasonably informed about  
19           the status of a matter, and comply promptly with  
20           reasonable requests for information. A lawyer shall  
21           notify the client promptly of all settlement offers,  
22           mediation evaluations, and proposed plea bargains"  
23           and then paren (B), "A lawyer shall" -- shall, it's  
24           mandatory -- "shall explain a matter to the extent  
25           reasonable necessary to permit the client to make

1 informed decisions regarding the representation."

2 Q So, I take it the -- your answer -- well, you should  
3 -- I don't know if -- I think that does answer my  
4 question, but just to put the -- dot the I here; in  
5 your opinion, did these attorneys, and -- as well as  
6 Mr. Copeland, have an obligation to advise this body  
7 as to the existence of the confidentiality agreement?

8 A I did not add the comment section; there's always a  
9 comment section --

10 Q Right.

11 A -- the Michigan Rules of Professional Conduct. It  
12 says, "The client should have sufficient information  
13 to participate intelligently in decisions concerning  
14 the objectives of the representation and the means by  
15 which they are to be pursued to the extent the client  
16 is willing and able to do so." So the answer is  
17 obvious on its face.

18 Q Yes.

19 A If I don't --

20 COUNCIL PRESIDENT COCKREL: I'm sorry,  
21 Mr. Goodman. I'd like to ask the witness to repeat  
22 his last statement. It was just a little hard to  
23 hear you, because you were speaking kind of low, for  
24 --

25 THE WITNESS: Sure. I have a -- I

1 have an obligation, so does every lawyer, to fully  
2 inform my client of all facts and there are  
3 consequences when I don't.

4 COUNCIL MEMBER COCKREL: So the answer  
5 on the text messages is yes.

6 COUNCIL PRESIDENT COCKREL: We'll come  
7 to that.

8 COUNCIL MEMBER COCKREL: I know, but I  
9 just --

10 THE WITNESS: Yes.

11 COUNCIL PRESIDENT COCKREL: Yes.

12 BY MR. GOODMAN:

13 Q I want to turn your attention for the moment to Mr.  
14 Stefani here. I'm sure you've heard a number of the  
15 lawyers other than Mr. Stefani refer to their  
16 concerns about his behavior during this litigation;  
17 the way in which he received this text message; the  
18 fact that there had been a prior order that the  
19 SkyTel text messages be delivered not to him but to  
20 the court, and so on. You recall that --

21 A Yes.

22 Q -- line of questions and series of testimonies; is  
23 that correct, sir?

24 A Yes.

25 Q One issue that was raised by several of the lawyers

1 was that the -- the need to obtain or wrest this  
2 information from Mr. Stefani and get it into a safety  
3 deposit box, because of their fear that he would  
4 publicly disclose this information; you recall  
5 hearing that was well, I assume?

6 A Yes.

7 Q Is that right? My question to you is, was there  
8 anything short of settling this case within less than  
9 24 hours of having learned of this information, that  
10 these lawyers could have done to protect the Mayor,  
11 protect Ms. Beatty, although she was not their  
12 client, protect this body, and protect the City of  
13 Detroit, other than settling the case?

14 A Yes.

15 Q And in your opinion, those -- would have been what,  
16 sir?

17 A Well, the most obvious is the testimony of Mr.  
18 McCargo. A court speaks through its orders. If the  
19 lawyers who were involved in this case knew that  
20 those text messages were to be turned over to the  
21 judge, because that was the last order that was  
22 issued by the judge, then there's absolutely no rush  
23 to judgment concerning these text messages, because  
24 the lawyers had a toolbox full of tools in which to  
25 create a framework to dispose of this case. For

1 example, and you mentioned it, I believe, in your  
2 examination of Mr. McCargo, Mr. Goodman. Oftentimes,  
3 I represent clients who are executives, and because  
4 they are executives, presidents, vice presidents,  
5 senior executives, they have access to confidential  
6 information. When something bad happens to them  
7 because they're a whistleblower, let's say, or  
8 because they're a victim of discrimination, they have  
9 this information in their possession. My opponents  
10 when we bring lawsuit notice, one of the first things  
11 they do is rush into court with a number of requests;  
12 a motion for a protective order, so that that lawyer  
13 is prevented from disclosing any of that information  
14 outside the confines of that courtroom. Motion to  
15 seal the documents. That mean there -- it can't even  
16 be mentioned in open court. The court conducts  
17 what's called an in camera review in its chambers, in  
18 his or her chambers. And then, of course, a gag  
19 order that prevents the lawyers for any of the  
20 parties from disclosing any of the information to the  
21 press. So one of the ways -- the most obvious way in  
22 which the City of Detroit and/or the Mayor and any of  
23 the branches of this government could have been  
24 protected, is once Mr. Stefani revealed, according to  
25 Mr. Copeland, threatened the City with these text

1 messages, the City lawyers could have filed a series  
2 of motions and shut it down.

3 Q And those orders, if you get the protective order,  
4 the gag order, the -- the order -- the tools that you  
5 were talking about, if there is a leak, if there is  
6 any even arguable breach of those orders, that  
7 behavior is -- is punishable how, sir?

8 A Well, the court has a number of ways to punish that  
9 behavior, and -- and often does, including put the  
10 lawyer's law license in jeopardy, steep fines, an  
11 inability to appear before that judge; there are a  
12 number of sanctions that can -- can flow from a  
13 violation of a -- of any court order, let alone a  
14 court order that would be of this magnitude.

15 Q And I think there was some skepticism expressed with  
16 regard to Judge Callahan's willingness to be  
17 cooperative or forthcoming in this matter. If that,  
18 in fact, had been the case, could the lawyers have  
19 attempted to protect their clients in other ways as  
20 well?

21 A They have appellate rights, and if you claim in an  
22 appellate brief that you are being potentially  
23 extorted, hijacked, you -- you won't get a -- a  
24 quicker response from the Court of Appeals  
25 overturning the court -- the court order. But I will

1 say having appeared before Judge Callahan, and of  
2 course, all of us -- I'm a plaintiff lawyer, and all  
3 of us have our opinions about judges and the quality  
4 of the judges; but Judge Callahan is a man --  
5 whatever you think his political philosophy is, he is  
6 a long member of the bench, and he would never, in my  
7 opinion, do something that would put the rights of  
8 any of the parties before him in danger in any way.

9 Q In this particular situation, we have been presented  
10 with a situation of -- if I can characterize it this  
11 way, of the defense lawyers have been -- I'll put the  
12 word in quotation marks "teased" with certain  
13 information about the contents of these text  
14 messages. You know what I'm referring to --

15 A Yes.

16 Q -- is that right?

17 A Yes. The motion --

18 Q Yes.

19 A -- that was given -- Mr. McCargo.

20 Q With excerpts --

21 A Yes.

22 Q -- and -- and words and phrases and so on from the  
23 text messages.

24 A Yes.

25 Q In your opinion, as a lawyer, and as a -- active

1 litigator for many years, is it appropriate to  
2 recommend a settlement involving \$8.4 million  
3 dollars, without having seen the -- the original or  
4 underlying documents to verify the -- the reality of  
5 this information?

6 A That would be imprudent.

7 Q And do you think -- in your experience in negotiating  
8 many settlements, would there have been ways or  
9 mechanisms in which lawyers could demand to see the  
10 information before they -- before they agree to  
11 settle the case?

12 A Certainly in my practice it has happened and we've  
13 done it.

14 Q Just -- if -- if you could, just elaborate on that a  
15 little bit more, sir.

16 A Sure. I can recall a case in which a prominent  
17 lawyer in this community sexually harassed her  
18 secretary. Very, very -- it could have been a career  
19 destroying case, and there was certain information  
20 that I had. I -- I can tell you that the attorneys,  
21 my opponents, would not have simply allowed me to  
22 suggest to them that I had something without seeing -  
23 - without a request to see it.

24 Q And in the interests of your client and in an attempt  
25 to settle the case beneficially for your client,

1           there would have been no reason for you not to show  
2           them that information; is that correct, sir?

3       A     That's correct.

4       Q     Now, you I think have indicated you -- you've stated  
5           in terms of -- in your preliminary remarks that you  
6           tried a number of cases and achieved seven-figure  
7           results in these cases; is that correct, sir?

8       A     Our largest -- our largest verdict was \$45,000,000.00  
9           against Detroit Edison --

10      Q     In some of these cases which you've tried to verdict  
11           have been against municipalities, including this one;  
12           is that right, sir?

13      A     I used to tell some of the City lawyers that they  
14           were going to finance my children's college education  
15           if they didn't settle the case, and they didn't, and  
16           they did.

17      Q     Now, in that regard, have you settled those cases  
18           after verdict?

19      A     Yes.

20      Q     Have you ever settled a case immediately after  
21           verdict, and by immediately after verdict, I mean  
22           before the transcript has been prepared, before the  
23           post-verdict motions have been filed, within let us  
24           say less than two months of the -- of the verdict  
25           itself for a -- a number as close to the value of the

1 judgment as this particular case was settled?

2 A It would never happen.

3 Q And the reason is?

4 A The attorney for the other side, in this case I'm a  
5 plaintiff's lawyer, so my opponent, the defendant's  
6 lawyers, would use every possible means at their  
7 disposal to reduce, to bargain, to negotiate, to  
8 reduce the damage to their clients, to reduce the  
9 amount of money that their clients had to pay us.  
10 That is the cardinal rule; to either beat me, or if  
11 they can't beat me, to limit the exposure of their  
12 clients, to limit the amount of money that their  
13 clients have to pay.

14 Q And at a minimum, is it your experience and  
15 expectation that a defense lawyer, in trying to  
16 negotiate a case, will at least appear to be  
17 preparing for an appeal by ordering the transcript  
18 and obtaining the transcript?

19 A It's part of the psychological warfare battle. It's  
20 what we do.

21 Q Mr. Edwards, I think you testified here today, and  
22 it's clear that you are not a lawyer for the City,  
23 but in fact have opposed the City in many -- many  
24 circumstances --

25 A Yes.

1 Q -- and as well have served the community. In your  
2 opinion, are there ways in which the City of Detroit  
3 can approach and address civil rights litigation so  
4 as to both further the ends of justice where  
5 injustice has occurred, and save the City money at  
6 the same time?

7 A Sure.

8 Q And can you give us some examples of that?

9 A The most obvious is you have, for example, the  
10 gentleman sitting -- seated right next to Mr.  
11 McCargo, for example. You have -- this City has  
12 produced some wonderful lawyers over the years,  
13 including your father.

14 Q Thank you very much.

15 A And your law firm.

16 Q Thank you.

17 A And your father's predecessor, Morris Sugar, George  
18 Crockett, Junior, the senior George Crockett, and  
19 many, many others who I have said many times, both  
20 publicly and privately, I stand on their shoulders.  
21 One of the things that's always concerned me as a  
22 attorney in private practice, who litigates major  
23 cases, civil rights cases, constitutional --  
24 employment discrimination cases, police brutality  
25 cases, is that the city government has to develop a

1 method, and -- and for example, you could retain a  
2 George Bedrosian, for example, as an advisor to --  
3 the complex cases that can blow up, as cases can, as  
4 -- as happened in this case. You've heard it  
5 referred to as risk management. Doesn't have to be a  
6 formal risk management person from an insurance  
7 company. This community has a wealth of talent with  
8 lawyers who have slowed down, like I have -- and --  
9 and this community has a wealth of legal talent who  
10 would contribute to the betterment of the city. Yes.

11 Q On a voluntary basis?

12 A On a voluntary basis.

13 Q And by the way, I want to thank you for your pro bono  
14 participation in -- and advice to this body today.

15 A Well -- that I represent to preserve the quality of  
16 life for the City, such as the privatization case,  
17 the human rights case, the Detroit General Hospital  
18 case, my office does not charge the City a penny, and  
19 we paid our expenses out of our pocket.

20 MR. GOODMAN: Mr. President, I have no  
21 further questions. I'm sure members of Council may.

22 COUNCIL PRESIDENT COCKREL: Yes, they  
23 do. First on the list is Council Member Kenyatta,  
24 Council Member Cockrel. I don't see any other  
25 questions, but let me know -- Council Member

1 Kenyatta.

2 COUNCIL MEMBER KENYATTA: Thank you,  
3 Mr. President, and thank you Mr. Edwards for being  
4 here.

5 You have a long history of struggle  
6 and commitment to, as you stated, the civil rights  
7 and human rights committee -- human rights committee  
8 -- human rights struggle. There was a human rights  
9 committee, and I, of course (inaudible) and others,  
10 and I know of your integrity and your respect around  
11 the country --

12 THE WITNESS: Thank you, Member  
13 Kenyatta.

14 COUNCIL MEMBER KENYATTA: Your  
15 testimony has actually left very little room for  
16 questions, because it's been somewhat complete;  
17 however, I do have a few.

18 But before that -- well not before  
19 that. When you sat down, you made a statement that  
20 was not elaborated on, and I want to give you an  
21 opportunity to elaborate on that. And you spoke of a  
22 constitutional crisis.

23 THE WITNESS: Yes.

24 COUNCIL MEMBER KENYATTA: What do you  
25 mean by that?

1 THE WITNESS: I am currently -- have  
2 been asked -- by members of this body, as well as  
3 AFSCME president, Council 25, Al Garrett (ph), to  
4 once again give back to the community in the form of  
5 a coalition that seeks to balance the scales of  
6 justice again, because they're skewed markedly.

7 My view of -- of where we are in the  
8 larger context is that things flow from the top.  
9 What do I mean by that? You have a whistleblower  
10 currently on the Michigan Supreme Court. Her name is  
11 Elizabeth Weaver. And I have, and if you give me two  
12 minutes just to quote from one of her opinions, this  
13 is what Justice Weaver says with regard to our  
14 present Supreme Court.

15 "I could not support Chief Justice Taylor or  
16 any member of the majority of four to serve as  
17 chief justice at this time. I would support  
18 either Justice Michael Cavanaugh or Justice  
19 Marilyn Kelly. This dissent to the election of  
20 Chief Justice Taylor, as chief justice, reveals  
21 only the tip of the iceberg of the misuse and  
22 abuse of power, and the repeated disorderly,  
23 unprofessional, and unfair performance and  
24 conduct of the people's judicial business by the  
25 majority of four. Chief Justice Taylor and

1 Justice Corrigan, Young, and Markham. I believe  
2 it is my duty and my right to inform the public  
3 of the repeated abuses and/or misconduct by these  
4 justices. The majority of four's suppression of  
5 dissent and attempts to suppress dissent,  
6 mishandling of administrative duties, repeated  
7 disorderly, unprofessional, and unfair conduct  
8 are matters of legitimate public concern. Over  
9 the past year and longer, the majority of four  
10 have advanced a policy towards greater secrecy  
11 and less accountability. I strongly believe that  
12 it is past time to let sunlight into the Michigan  
13 Supreme Court. An efficient and impartial  
14 judiciary is ill-served by casting a cloak of  
15 secrecy around the operation of the court."

16 This is the climate that, Member  
17 Kenyatta, that this crisis unfolds in. You have a  
18 Supreme Court, by its own conduct, that has sent  
19 signals to all of us in the legal profession that  
20 it's okay to compromise lady justice. It's okay to  
21 cheat under the blindfold and give justice to the  
22 rich and the powerful and not -- the people of color,  
23 working people in the middle class; that have taken  
24 the rights of individuals in this state to the brink  
25 of extinction.

1 And so it flows down. So lawyers who  
2 represent the powerful feel that they can do the same  
3 thing. It'll never see the daylight of sunshine.  
4 And that's what I meant, and I'm glad you gave me the  
5 opportunity to fully elaborate on it. We have a  
6 constitutional crisis.

7 COUNCIL MEMBER KENYATTA: Thank you.

8 My next question is, you -- you quoted  
9 from the Michigan Code of Responsibility, as -- as  
10 well as, I believe, the rules as it relates to the  
11 responsibility of an attorney to his client.

12 THE WITNESS: Yes.

13 COUNCIL MEMBER KENYATTA: And to fully  
14 inform and -- and shall explain to the client.

15 THE WITNESS: Yes.

16 COUNCIL MEMBER KENYATTA: Well -- and  
17 I'm not an attorney, maybe there's some room there, I  
18 don't know. If -- if my attorney calls me and say I  
19 have a settlement; is it my responsibility or this  
20 Council responsibility to say well, tell us all of  
21 the terms of the settlement; tell us what happened  
22 that led up to the settlement, and if there's  
23 anything damaging, is there anything coming back, or  
24 is it the responsibility of our attorney to say this  
25 is how we got to that settlement. There was some

1 dangers or damaging material, and we had to conclude  
2 -- and there were also some other things that  
3 involved the settlement, and we had to come to a  
4 settlement? Is it their responsibility as the  
5 attorney, or is it my responsibility as the client to  
6 say tell me more?

7 THE WITNESS: Let me answer it this  
8 way, and I hope I can answer directly, Member  
9 Kenyatta. It is my view, after 33 years -- actually  
10 35, because I practiced two years as a student -- it  
11 is my view that a prudent lawyer practices looking  
12 both forward and backward. What do I mean by that?  
13 By forward, I've got an obligation to give my client  
14 all of the facts, so that that client can make an  
15 informed decision, as I've read to you, in Michigan  
16 Rules of Professional Responsibility 1.4. In  
17 addition, I have a self-interest also. And what is  
18 that self-interest? I've got to be concerned, if I  
19 don't do it right, someone later is gonna come and  
20 look over my shoulder and say you acted imprudently.  
21 Now, I am -- if -- if that happens, I am placing my  
22 law license in jeopardy, and I don't need to tell you  
23 how difficult law school was. I don't need to tell  
24 you how difficult it was, even in this city, trying  
25 to get out of law school with an institution that

1 didn't think that we belonged there. That felt that  
2 it -- that because there was an affirmative action  
3 program, we were not qualified to be lawyers. That  
4 discriminated against us in every way. My first year  
5 class, 80 percent -- 88 or 85 percent of our first  
6 year class were flunked out by that law school. So  
7 we had to fight this from day one. We've had to  
8 continue to fight. They didn't just say come on out,  
9 Mr. Edwards, you can be a civil attorney, practicing  
10 these major complex cases. In fact, there were  
11 prominent attorneys in this community who reported to  
12 the newspaper saying we didn't have the ability to  
13 handle complex cases.

14 When I became president of the  
15 Michigan Trial Lawyers Association, it wasn't an  
16 affirmative action situation. They didn't put me in  
17 there as a figurehead. In fact, in some -- it was  
18 resisted to have a black president.

19 So, we've had to fight for everything  
20 we've got, every step of the way. And when you do  
21 that, you have to think long and hard about your  
22 conduct; even in these times. Maybe the big law  
23 firms -- the law firms rather -- participants --  
24 represent the City and the Mayor, maybe they can't  
25 get business anymore with -- with the big

1 corporations. In this time, as you know, the large  
2 corporations are cutting back on contracts; they  
3 don't have to contract with us anymore. And so maybe  
4 where you have to go to get some money, you know, he  
5 who pays the piper calls the tune.

6 You have to factor in all of these,  
7 but at the end of the day it is my view that I will  
8 practice law on my dining room table before I let  
9 them take my law license away. It just came too hard  
10 and at too high a price.

11 COUNCIL MEMBER KENYATTA: My next  
12 question is you testified that when Mr. Stefani  
13 passed the envelope containing the alleged motion --  
14 we haven't seen it -- to Mr. McCargo and the  
15 discussion that went on there with the three lawyers  
16 in the parking lot; that there were some options, and  
17 the options was not just to make a call and say they  
18 got the messages, we need to settle. You mentioned  
19 motion to protect --

20 THE WITNESS: Yes.

21 COUNCIL MEMBER KENYATTA: -- you  
22 mentioned motion to seal --

23 THE WITNESS: Yes.

24 COUNCIL MEMBER KENYATTA: -- you  
25 stated something that Ms. Osamuede said yesterday; it

1 could have been shut down by not running to settle,  
2 but running to the court --

3 THE WITNESS: Yes.

4 COUNCIL MEMBER KENYATTA: -- because  
5 you didn't know exactly what they had, and because  
6 you didn't know what they had, it could have been  
7 shut down. Would that have prevented facilitation  
8 from continuing -- negotiation from continuing?

9 THE WITNESS: No, sir. It buys you  
10 time. That's exactly what it does. It recalibrates  
11 or recreates that framework for you to discuss -- to  
12 negotiate a settlement --

13 COUNCIL MEMBER KENYATTA: Okay.  
14 Finally, you brought something to our attention that  
15 may have slipped us; that Ms. Osamuede signed a  
16 number of settlement agreements, both on part of the  
17 City and the Mayor. You pointed that out.

18 Mr. McCargo pointed out, in his  
19 written statement, and you heard me read it earlier,  
20 about the opt-in provision.

21 THE WITNESS: Yes.

22 COUNCIL MEMBER KENYATTA: Where he  
23 indicated that this was not a -- a binding settlement  
24 agreement on the 17th, by it's terms that there would  
25 become -- it would become effective if all of the

1 parties complied with the opt-in provision. By our  
2 attorneys being there and understanding this being  
3 the -- the relationship and that they really didn't  
4 have a binding agreement, were Council -- should  
5 Council have been informed, and by who, of this opt-  
6 in -- well it doesn't say opt-out -- opt-in provision  
7 here, and should a binding agreement -- a non-binding  
8 agreement been presented to us when in fact it was  
9 not finalized? That's actually two questions, but --

10 THE WITNESS: I -- I think I  
11 understand the gist of both of them though, and --  
12 and I think Member Collins and Member Watson have  
13 both raised the related issue; that is whether or not  
14 the lawyers even had the authority to settle the case  
15 after it was rejected.

16 In this situation, it is my opinion,  
17 and I run into this situation in reverse with being a  
18 plaintiff attorney. It is often -- not often, but it  
19 does happen that we will say -- and when I negotiate  
20 a case, particularly a major case, and in fact I have  
21 a situation right now where I'm negotiating a seven-  
22 figure settlement. Both parties have agreed that,  
23 although we have agreed on the amount, we don't have  
24 the authority to bind -- to bind our respective  
25 client, and we have agreed that this settlement will

1           only take place if both parties agree. If one of the  
2           other party doesn't agree, then we don't have a  
3           settlement. So, under that situation, I've got to  
4           fully disclose that to my client, and it is my  
5           opinion that the City's lawyers should have disclosed  
6           it to you.

7                       COUNCIL MEMBER KENYATTA: Thank you.

8                       COUNCIL MEMBER COCKREL: Thank you.

9           I'm next speaker, and then Member Collins and Member  
10          - President Pro Tem Conyers' name is there. Does  
11          anyone else want to be added? Okay.

12                      Good morning, Mr. Edwards.

13                      THE WITNESS: Good morning.

14                      COUNCIL MEMBER COCKREL: (Inaudible)  
15          very, very thoughtful presentation here this morning.

16                      I have essentially two questions I'd  
17          put to you. In light of your testimony today and  
18          your -- and following up on Member Kenyatta's third  
19          question to you, there's this toolbox of options that  
20          the Law Department lawyers and outside counsel had  
21          relative to the Stefani teaser, as Mr. Goodman  
22          described it.

23                      THE WITNESS: Yes.

24                      COUNCIL MEMBER COCKREL: Could one  
25          invoke a reasonable person standard and potentially

1 draw the conclusion that the reason none of these  
2 actions were taken is that the -- the intent -- the  
3 consequences of whatever decision was being made was  
4 designed to conceal the text messages; that that was  
5 the guiding principle to the process or procedures  
6 that were undertaken, certainly in the period from  
7 October 17th forward, when one might argue going back  
8 to 2004 and with the whole pattern of -- of appealing  
9 everything down the road had to do with somehow  
10 keeping the text messages from ever seeing daylight?

11 THE WITNESS: Yes.

12 COUNCIL MEMBER COCKREL: So that --  
13 that's a fair conclusion to draw?

14 THE WITNESS: Yes. And I -- and I  
15 must say that, since I know all of the lawyers  
16 involved, I hope that that's not the conclusion that  
17 is drawn by the investigative bodies that are  
18 investigating, because if it is, there are severe  
19 penalties.

20 COUNCIL MEMBER COCKREL: Okay. Well,  
21 because I personally believe that all the lawyers  
22 that we have heard to date are extremely talented  
23 members -- distinguished members of the bar --

24 THE WITNESS: Yes.

25 COUNCIL MEMBER COCKREL: -- whose --

1           whose legal skills -- I'm just trying to find another  
2           explanation --

3                   THE WITNESS:   Yes.

4                   COUNCIL MEMBER COCKREL:  -- and as --  
5           as this process has unfolded and as the testimony has  
6           been taken the last few days, it gets harder and  
7           harder to understand --

8                   THE WITNESS:   Yes.

9                   COUNCIL MEMBER COCKREL:  -- the  
10          decisions -- and recommendations were made to this  
11          Council.  So that's -- that's my only reason --

12                   THE WITNESS:   Yes.

13                   COUNCIL MEMBER COCKREL:  -- for --

14                   THE WITNESS:   As I -- as I've said,  
15          Member Cockrel, I have great respect for the lawyers  
16          that are involved; great -- and I mean great.  And I  
17          -- I agree with you wholeheartedly.  And it would be  
18          a shame if that's the conclusion that's drawn by an  
19          investigative body that it was not prudent.

20                   COUNCIL MEMBER COCKREL:  And then  
21          secondly, and -- and -- you made reference earlier to  
22          tab three, which was the original exhibit 11 from one  
23          of the various litigations --

24                   THE WITNESS:   Yes.

25                   COUNCIL MEMBER COCKREL:  -- of the

1 settlement agreement. It does create this whole --  
2 we had a long discussion yesterday about liquidated  
3 damages from -- being paid to the City --

4 THE WITNESS: Yes.

5 COUNCIL MEMBER COCKREL: -- for a  
6 document that was considered confidential and not  
7 public. So I guess the -- the question that flows  
8 from that for me then is also that should we -- we  
9 did have the right -- it would be your -- your  
10 judgment that we had the right to -- to know about  
11 these settlement agreements as part of the process of  
12 making an informed decision as a client or part of a  
13 client in this matter.

14 THE WITNESS: I don't think there's  
15 any dispute on that.

16 COUNCIL MEMBER COCKREL: Okay. That's  
17 -- that's categorical?

18 THE WITNESS: Yes.

19 COUNCIL MEMBER COCKREL: Okay. And --  
20 all right. Thank you very much. Member Collins.

21 COUNCIL MEMBER COLLINS: Thank you,  
22 Madame --

23 THE WITNESS: Good morning.

24 COUNCIL MEMBER COLLINS: Good  
25 afternoon.

1 THE WITNESS: Or good afternoon.

2 COUNCIL MEMBER COLLINS: I -- I guess  
3 -- make statements more than ask questions. But it  
4 seems to me that this whole thing could have been  
5 avoided if the parties had the gumption to say no;  
6 you know, I cannot do this, or no, you should not do  
7 this." But anyway, they had the obligation to inform  
8 the Mayor what you're doing is against the law --  
9 suppress evidence or -- or what you're doing may --  
10 if I concur with it, my law license might be in  
11 jeopardy, or no, this is an ethical, or no, this is  
12 against the Charter.

13 But it seems to me that the whole  
14 thing boils down to attorneys with great experience,  
15 reputation, didn't have the gumption to say no. Am I  
16 right or wrong?

17 THE WITNESS: Well, as I said, there  
18 are two cases that directly relate to (inaudible);  
19 the first is this case. My law office said no.

20 COUNCIL MEMBER COLLINS: I didn't hear  
21 you.

22 THE WITNESS: My law office received a  
23 call to represent the Mayor before Sam McCargo was  
24 selected, and we said no.

25 COUNCIL MEMBER COLLINS: Mm-hmm.

1 THE WITNESS: I reviewed the Tamara  
2 Green file and I said no. And that is my  
3 prerogative, and that is the values that informed my  
4 decision. And every -- every lawyer, Member Collins,  
5 has to deal with their own conscience and their own  
6 sense of values, and obviously whether or not they  
7 got to pay their bills.

8 COUNCIL MEMBER COLLINS: Right, I  
9 understand that. But it's their obligation, as  
10 employees of the City, as corporation counsel, to say  
11 no, and to let their client know when something is  
12 detrimental to justice.

13 THE WITNESS: I would think so, yes.  
14 That's why I said earlier, in response to Member  
15 Kenyatta's question, that I believe every lawyer  
16 should look both frontwards and backwards.  
17 Frontward, with a view to serving the best interests  
18 of their client, and backward because -- I didn't win  
19 every case, and when you lose, believe me, not only  
20 do you feel bad, but you have a dissatisfied client,  
21 so you have to think about your own self-interest.  
22 What if. I always say that. When I teach seminars  
23 on these subjects; what if. You have to say what if.

24 COUNCIL MEMBER COLLINS: Mm-hmm.

25 THE WITNESS: And what if things go

1 bad. And by putting my own integrity, my own  
2 reputation, and that hard-won law license and  
3 reputation in jeopardy. I don't think there's a  
4 price for that.

5 COUNCIL MEMBER COLLINS: I don't think  
6 -- yeah -- as an officer of the court.

7 THE WITNESS: That's right.

8 COUNCIL MEMBER COLLINS: You don't  
9 have -- have to be; you don't have the choice to put  
10 your integrity aside to accommodate the client.

11 THE WITNESS: I agree.

12 COUNCIL MEMBER COLLINS: To  
13 accommodate the client's wishes. What happens when  
14 you do -- you put it aside, your own integrity.

15 THE WITNESS: Yes.

16 COUNCIL MEMBER COLLINS: Your own  
17 conscience of what's right and wrong, and you put  
18 that aside (inaudible) job security.

19 THE WITNESS: Yes.

20 COUNCIL MEMBER COLLINS: For whatever  
21 reason, you're jeopardizing (inaudible).

22 THE WITNESS: Yes.

23 COUNCIL MEMBER COLLINS: And that's  
24 why we're where we are today.

25 THE WITNESS: That's why you have a

1 constitutional practice.

2 COUNCIL MEMBER COLLINS: Yes. Because  
3 lawyers didn't have the -- the gumption to say no.  
4 That you shouldn't do this --

5 THE WITNESS: And that would --

6 COUNCIL MEMBER COLLINS: -- this isn't  
7 right, or this may have repercussions, but -- but no.

8 THE WITNESS: That was their  
9 prerogative, and now that's why they are here trying  
10 to explain the decision, and --

11 COUNCIL MEMBER COLLINS: -- to the  
12 other side. Mr. Stefani --

13 THE WITNESS: All right.

14 COUNCIL MEMBER COLLINS: It seems to  
15 me that he had an obligation also to the courts, to  
16 divulge information he got, and I understand he got  
17 the -- the text messages went to him, when the judge  
18 had required them to go to the judge, and it appears  
19 that he used those text messages to intimidate,  
20 frighten lawyers -- but isn't that against the Canons  
21 of the court?

22 THE WITNESS: Yeah.

23 COUNCIL MEMBER COLLINS: Should not  
24 the judges be concerned about that?

25 THE WITNESS: Yes, that's why Judge

1 Callahan, I believe, said that he was referring the  
2 matter to the Attorney Grievance Commission for an  
3 investigation, because he obviously was concerned.

4 COUNCIL MEMBER COLLINS: Not being a  
5 lawyer, but I have written laws, it seems to me that  
6 if I'm pushing for a settlement for something, and I  
7 have some egregious information, and I give it to the  
8 opposing attorney, it's almost a blackmail,  
9 extortion, intimidation?

10 THE WITNESS: Well, let me answer it  
11 this way. When -- when you're in the fight, Member  
12 Collins, you're going to bring everything to bear you  
13 can to win that fight. And when we are in -- in --  
14 when we represent a client, it's a fight; it's a  
15 legal fight. It has rules, but it's a fight. And  
16 you're going to bring everything you can to bear so  
17 that you can win. Especially when you're  
18 representing the individual against a -- a powerful  
19 governmental agency, or against a powerful private  
20 corporation, you're going to do everything you can.  
21 As they said about Hilary Clinton in the Barack Obama  
22 fight; you're going to throw everything, including  
23 the kitchen sink, to win. But again, you have to  
24 always be mindful, at the end of the day, you've got  
25 to be careful what you throw into the fight.

1 COUNCIL MEMBER COLLINS: You have to  
2 be ethical.

3 THE WITNESS: But there are  
4 consequences when you're not.

5 COUNCIL MEMBER COLLINS: You have to  
6 be ethical -- fight for your client there are rules.

7 THE WITNESS: Yes. Yes.

8 COUNCIL MEMBER COLLINS: And that  
9 lawyer fighting for his client or her client, would  
10 have obligations to communicate to the court; I have  
11 information that you requested. I don't know how I  
12 got them, but you didn't get them, and I have them.

13 THE WITNESS: In this case, there was  
14 a standing order, according to the testimony of Mr.  
15 McCargo, that those text messages were to be turned  
16 over to the court.

17 COUNCIL MEMBER COLLINS: Mr. Stefani  
18 said that he didn't turn them over to the court  
19 because the trial was over, and therefore he wasn't  
20 obligated to turn them over. But in reading, you  
21 know, what I'm reading, when the judge asked -- it  
22 seems to me it's not up to a lawyer to decide well,  
23 what he asked for doesn't matter anymore, because the  
24 trial was over. Am I correct or incorrect?

25 THE WITNESS: You're correct. I would

1 have turned them over to the court.

2 COUNCIL MEMBER COLLINS: Thank you  
3 very much. You're like a breath of fresh air.

4 THE WITNESS: Thank you.

5 COUNCIL MEMBER COLLINS: And I -- it's  
6 hard, it's difficult, but I believe in daylight.

7 THE WITNESS: Yes.

8 COUNCIL MEMBER COLLINS: Because what  
9 you do in the dark will eventually come out into the  
10 light.

11 THE WITNESS: Yes.

12 COUNCIL MEMBER COLLINS: You know,  
13 whether you want it to or not.

14 THE WITNESS: Yes.

15 COUNCIL MEMBER COLLINS: Thank you  
16 very much.

17 THE WITNESS: Thank you.

18 COUNCIL PRESIDENT PRO TEM CONYERS:

19 Yeah. I'm gonna skip me; I'm going to come back at  
20 the end, but is this supposed to you, KZ? Is that --

21 COUNCIL MEMBER KENYATTA: It's KK.

22 COUNCIL PRESIDENT PRO TEM CONYERS:

23 Oh, you know what?

24 COUNCIL MEMBER KENYATTA: Thank you  
25 once again, Mr. Edwards. This here is my last

1 question.

2 You mentioned both parties having to  
3 agree or there is no agreement, and you also again  
4 mentioned that Mrs. Osamuede had signed for both the  
5 City and -- and the Mayor. The Mayor later opted out  
6 through a -- a notice of rejection. As Council  
7 worked -- as this body worked, and you talked a  
8 little bit about that earlier, but as this body  
9 worked, the Mayor propose, we dispose. That Council  
10 doesn't sign off on agreements, the Mayor signs off  
11 on agreements, so it -- when the Mayor signed and  
12 rejected that agreement, in your opinion did the  
13 agreement become null and void?

14 THE WITNESS: Yes.

15 COUNCIL MEMBER KENYATTA: Thank you.

16 COUNCIL PRESIDENT PRO TEM CONYERS:

17 Council Member Jones.

18 COUNCIL MEMBER JONES: Thank you.

19 Thank you for being here.

20 I have two questions that -- right now  
21 -- and my first question is going to Mr. McCargo's  
22 statement, and on page six, he indicates, "I was  
23 convinced that these records contained sensitive  
24 matters covered by the governmental deliberative  
25 process privilege." And I think you've already

1 testified to this, but in your mind, even though the  
2 records contained sensitive matters, do you feel that  
3 those records still should have been brought to this  
4 body?

5 THE WITNESS: Yes.

6 COUNCIL MEMBER JONES: I want to ask  
7 Mr. Goodman -- copies of memo -- I got two copies,  
8 and I brought a copy for you, if you would look at  
9 it, and a copy for Attorney Goodman, and this is a  
10 memo that I just recently obtained that's dated June  
11 26th, 2000, and it was directed to department  
12 directors, agency heads, members of boards and  
13 commissions, city council members -- information  
14 technology services department, and the subject was  
15 directive for the use of (inaudible) Detroit's  
16 electronic communication system, and it was signed by  
17 Kwame M. Kilpatrick, Mayor, and --

18 COUNCIL MEMBER COLLINS: He wasn't  
19 Mayor in 2000.

20 COUNCIL PRESIDENT PRO TEM CONYERS: He  
21 wasn't Mayor in 2000.

22 COUNCIL MEMBER JONES: Well, this was  
23 --

24 COUNCIL MEMBER COLLINS: 2006.

25 COUNCIL MEMBER JONES: '06. 2006,

1 maybe that's what it says. I don't have my glasses.

2 But at any rate, it's signed by Mayor  
3 Kwame Kilpatrick, and (inaudible) city property, it  
4 is the policy of the City that any electronic  
5 communications created, received, transmitted, or  
6 stored through use of any part of the city's  
7 electronic communication system, included, but not  
8 limited to, all hardware, software, is the property  
9 of the city. According, any electronic  
10 communications created, received, transmitted, or  
11 stored -- electronic communication system is not  
12 considered, in whole or in part, as private in nature  
13 regardless of the level of security on the  
14 communication.

15 And even though it was not directed to  
16 (inaudible) do you think that this document -- is in  
17 reference to this electronic communication --

18 THE WITNESS: I don't think it's  
19 relevant under the 1.4 of the Michigan Code of  
20 Professional Responsibility. I don't think it's  
21 relevant at all, Member Jones. I think a lawyer has  
22 the responsibility period to disclose any and all  
23 settlement negotiations and relevant information to  
24 its client from the day of representation to the end  
25 of representation, and sometimes after that,

1                   depending upon what develops.

2                   COUNCIL MEMBER JONES:   Thank you.

3                   Thank you, President Pro Tem --

4                   COUNCIL PRESIDENT COCKREL:   President  
5                   Pro Tem, then Council Member Watson.

6                   COUNCIL PRESIDENT PRO TEM CONYERS:

7                   Thank you.

8                   I guess my question to you is when  
9                   there are joint defendants in cases with separate  
10                  lawyers and some parties agree to the settlement  
11                  amounts, like in this case, and other parties don't  
12                  or have yet to sign off on it, isn't -- is the --  
13                  let's see, then the city's appeal was still litigated  
14                  -- legitimate as long as the amount the city had to  
15                  pay did not change, was there an obligation to bring  
16                  all the information back to the client, even though  
17                  everything wasn't done yet?

18                  THE WITNESS:   Yes.

19                  COUNCIL PRESIDENT PRO TEM CONYERS:

20                  And so we talked about up here as to relates to  
21                  confidentiality agreements, about them being in open  
22                  setting or closed sessions.   When -- do you have an  
23                  opinion on that?

24                  THE WITNESS:   No.   I have never sent a  
25                  case through for approval by this body, so I wouldn't

1 want to venture an opinion other than to say it  
2 should be disclosed.

3 COUNCIL PRESIDENT PRO TEM CONYERS: It  
4 should be disclosed.

5 THE WITNESS: Yes.

6 COUNCIL PRESIDENT PRO TEM CONYERS:  
7 But then if you disclose it openly and it's  
8 confidential, doesn't that present some type of --  
9 some problems for you?

10 THE WITNESS: Yes. It's gonna -- it's  
11 gonna undo what you were attempting to do.

12 COUNCIL PRESIDENT PRO TEM CONYERS:  
13 Right. So then it should be done in a closed  
14 session, as opposed to an open session, if there's  
15 some form of confidentiality agreement and you breach  
16 that, then you've now opened yourself up for a  
17 different type of problem.

18 THE WITNESS: That's correct.

19 COUNCIL PRESIDENT PRO TEM CONYERS:  
20 Thank you, Mr. President.

21 COUNCIL PRESIDENT COCKREL: All right.  
22 Council Member Watson.

23 COUNCIL MEMBER WATSON: Thank you, Mr.  
24 President. Thank you, Carl Edwards, Esquire.

25 THE WITNESS: Thank you.

1 COUNCIL MEMBER WATSON: Just listening  
2 to you is music to the heart -- and I thank you for  
3 following not only in the footsteps of those persons  
4 who you've trained here in the office, but  
5 (inaudible).

6 THE WITNESS: Yes.

7 COUNCIL MEMBER WATSON: And others --

8 THE WITNESS: Close friend, yes.

9 COUNCIL MEMBER WATSON: I want to ask  
10 you, based on all that has transpired already, do you  
11 believe it is an appropriate course of action for  
12 this Council to demand that the Mayor reimburse the  
13 City for the \$8.4 million dollars relative to actions  
14 which (inaudible) circumstance it appears --

15 THE WITNESS: If you're asking for  
16 advice, I will give you. If you had come to me as a  
17 individual client, or any one of the nine of you, I  
18 would say to you, I would urge you to obtain an  
19 opinion from a competent attorney on whether or not  
20 the settlement agreement, the second settlement  
21 agreement, was lawful. Because if it wasn't, then  
22 there are consequences.

23 COUNCIL MEMBER WATSON: What would you  
24 recommend, given all that you know, and you may not  
25 have enough information to answer this, but what

1 would you recommend the City Council, in order to be  
2 operating ethically ourselves, do with the evidence  
3 and testimony that has been taken in these  
4 extraordinary hearings, related to the allegations of  
5 malfeasance by the Mayor?

6 THE WITNESS: I probably don't have  
7 enough information, other than a broad sketch. I  
8 understand that Attorney Goodman is going to develop  
9 a report.

10 COUNCIL PRESIDENT PRO TEM CONYERS:

11 Yes.

12 THE WITNESS: And at this stage beyond  
13 saying that I am certain you will have  
14 recommendations in that report, I don't know that I'm  
15 in a position to say much else.

16 COUNCIL MEMBER WATSON: I'd like you -  
17 - I've been around the block a few times, and  
18 therefore have many friends and relationships with a  
19 lot of attorneys in town --

20 THE WITNESS: Yes.

21 COUNCIL MEMBER WATSON: --

22 (inaudible).

23 THE WITNESS: Yes.

24 COUNCIL MEMBER WATSON: (Inaudible)

25 THE WITNESS: Yes.

1 COUNCIL MEMBER WATSON: I have  
2 (inaudible) there's some outstanding brilliant  
3 lawyers whose -- who've been called into question  
4 over issues, when I happen to believe that these  
5 folks whose names have been -- in the media who are  
6 persons who have operated ethically, brilliantly --

7 THE WITNESS: Yes.

8 COUNCIL MEMBER WATSON: -- with  
9 sensitivity and commitment to our community, over and  
10 above the call of duty.

11 THE WITNESS: Yes.

12 COUNCIL MEMBER WATSON: All of my  
13 history has shown me that, and but yet here we are  
14 with this mess.

15 THE WITNESS: It happens in  
16 constitutional crisis -- grandchildren and those yet  
17 unborn, you all are performing an invaluable public  
18 duty, no less than the Congress did, in my opinion,  
19 during the Watergate hearings, in the history of this  
20 country.

21 COUNCIL MEMBER WATSON: Is there any  
22 way to provide some -- some safe spot for attorneys  
23 who have this legacy of brilliant work, ethical work,  
24 who may have got caught up with perhaps misdirected  
25 loyalty or (inaudible) in this process and lost sight

1 temporarily of the Canons that would give them any  
2 space, elbow room, with respect to consequences?

3 THE WITNESS: Other than to say, and  
4 I'm speaking now out of a deep sense of -- of shared  
5 experience with Mr. Copeland, Mr. McCargo, Mr.  
6 Johnson, and the others. I have had nothing in my  
7 background -- and I want to say this -- nothing that  
8 would call into question the events that have -- that  
9 have occurred in this case. I -- I respect them  
10 immensely, but at the end of the day, you know, we  
11 are judged by our last case.

12 COUNCIL MEMBER WATSON: Thank you.  
13 Thank you, Mr. President.

14 COUNCIL PRESIDENT COCKREL: I have  
15 Council Member Tinsley-Talabi, and then I have one  
16 question.

17 COUNCIL MEMBER TINSLEY-TALABI: Thank  
18 you, Mr. President.

19 That was pretty somber, and I  
20 (inaudible) but if you could give me please your  
21 description for how we can return our city to a state  
22 of normalcy; how can we -- foundation; in your  
23 opinion how do we move forward, and I'm speaking to  
24 the folks who live up and down Mack Avenue --

25 THE WITNESS: Yes.

1 COUNCIL MEMBER TINSLEY-TALABI:

2 Puritan and Grand River.

3 THE WITNESS: Yes. I -- as I said in  
4 the beginning, Member Talabi, I've raised six  
5 children in this city. I'm a graduate of Chadsey  
6 High School, and in raising those six children, I've  
7 always said to them what was said to me by my father.  
8 There's a right way and there's a wrong way, and if  
9 you choose the wrong way, there are very, very  
10 perilous consequences for you. So choose the right  
11 way always; that's number one. Number two, treat  
12 everyone the way you want to be treated. And then at  
13 the end of the day, stretch your humanity to give  
14 back to what was given to us. Stretch your humanity  
15 and give back what was given to us. And in this  
16 regard, that's why I'm here. Leaders lead. You all  
17 are leaders, and you're leading, and there will be a  
18 legacy that you have left by this process that can  
19 only inure to the benefit of future generations. You  
20 are discharging the responsibility of co-equal branch  
21 of government proudly to the world, and I mean that  
22 sincerely.

23 To the brothers on Mack -- to the  
24 brothers on Mack and to the readers of the New York  
25 Times and Washington Post and the Economist magazine;

1           you are discharging your responsibility proudly.

2                   COUNCIL MEMBER TINSLEY-TALABI:    --  
3           fall down, but we get back up.

4                   THE WITNESS:   Yes.   Yes.

5                   COUNCIL MEMBER TINSLEY-TALABI:  
6           (Inaudible)

7                   THE WITNESS:   Yes.

8                   COUNCIL MEMBER TINSLEY-TALABI:   Thank  
9           you.

10                  THE WITNESS:   Thank you.

11                  COUNCIL PRESIDENT COCKREL:   All right.  
12           Mr. Edwards, I think it's good afternoon at this  
13           point, but I just have one question for you, because  
14           I agreed with Council Member Kenyatta earlier. I had  
15           a number of questions that I had prepared in advance  
16           -- your earlier testimony, as he indicated, was so  
17           complete and pretty much the questions were all  
18           answered.

19                  But there was one thing that Council  
20           Member Watson just asked -- asked you a few moments  
21           ago that I -- you answered the question, and I want  
22           to follow-up on that question and have you elaborate.

23                  THE WITNESS:   Sure.

24                  COUNCIL PRESIDENT COCKREL:   And I've  
25           just got to look through your quote. You had said

1 relative to the second settlement agreement that if  
2 it was quote "now lawful, there are consequences"  
3 unquote. Could you briefly outline what some of  
4 those consequences might be?

5 THE WITNESS: Yes.

6 COUNCIL PRESIDENT COCKREL: And might  
7 include?

8 THE WITNESS: One of the most obvious  
9 is your attorney being sued for malpractice, for  
10 negligence, for not acting reasonably. The  
11 disciplinary administrative agency ruling that there  
12 was misconduct, and affecting the law -- the law  
13 license of the attorneys who practice law.

14 COUNCIL PRESIDENT COCKREL: Anything  
15 else?

16 THE WITNESS: Yes. If you obtain the  
17 legal opinion that the lawyers acted, as we say in  
18 the legal community, without authority or (inaudible)  
19 and they have or may have personal exposure to pay  
20 back that money, and of course, depending on where  
21 this ends up, the Mayor may have personal  
22 responsibility to pay back that money.

23 If you look at the second agreement,  
24 the Confidentiality Agreement, the City of Detroit is  
25 not a party to that agreement, in my opinion. That -

1 - read the first paragraph of the Confidentiality  
2 Agreement, and it -- nowhere does it say the City of  
3 Detroit is included in the terms of that agreement.  
4 I believe it's at tab nine.

5 The first paragraph, President  
6 Cockrel, reads plaintiffs, Gary Brown, Harold  
7 Nelthrope, and Walter Harris, plaintiffs -- those --  
8 those are your three plaintiffs, and their attorneys,  
9 Stefani and Stefani, professional corporation -- so  
10 that's one side of the parties to the agreement.  
11 Enter into this agreement by and through their  
12 attorneys, with Kwame Kilpatrick and in parenthesis  
13 Kilpatrick, individually and personally, and  
14 Christine Beatty, individually and personally,  
15 effective November 1st, 2007. In consideration of  
16 the mutual promises contained herein, the parties  
17 agree as follows. So those are the two sets of  
18 parties. Nowhere in this Confidentiality Agreement  
19 is the City of Detroit listed as a party.

20 COUNCIL MEMBER COLLINS: Excuse me,  
21 the first paragraph --

22 THE WITNESS: Yes.

23 COUNCIL MEMBER COLLINS: (Inaudible)

24 THE WITNESS: Yes. Plaintiffs,  
25 Kilpatrick, and the City of Detroit have heretofore

1                   agreed to settle. That was a different settlement.

2                   COUNCIL MEMBER COLLINS: That's right.

3                   THE WITNESS: That's right, Member  
4                   Collins. It is -- you can't do it that way. You've  
5                   got to list who the parties are, who you are binding,  
6                   and then if you turn to the last page, who was being  
7                   bound?

8                   COUNCIL MEMBER COLLINS: What page is  
9                   that?

10                  THE WITNESS: Page nine, ma'am.

11                  COUNCIL MEMBER TINSLEY-TALABI: Yes.

12                  THE WITNESS: Look on page nine.

13                  COUNCIL MEMBER COLLINS: Mm-hmm.

14                  THE WITNESS: Do you see any signature  
15                  for a representative of the City of Detroit listed on  
16                  page nine?

17                  COUNCIL MEMBER COLLINS: No -- no.

18                  THE WITNESS: No. You have Kwame  
19                  Kilpatrick; he's already said that he did this  
20                  individually and personally.

21                  COUNCIL MEMBER WATSON: That's right.

22                  THE WITNESS: You have Christine  
23                  Beatty, who already said in this document, bound  
24                  herself individually and personally, not in any  
25                  representative capacity for the City of Detroit.

1                   So, by the terms, in my view, one of  
2                   the opinions you need, is by the terms of this  
3                   agreement, the City was not even being bound by the  
4                   Confidentiality Agreement.

5                   Now, if you look at the first one,  
6                   they were being bound. You were being bound. And so  
7                   the Mayor signs this and Christine Beatty signs it;  
8                   I've already said in response to Member Kenyatta's  
9                   question, I don't know that it's prudent to include  
10                  Christine Beatty in an agreement where she was never  
11                  a party to any of the proceedings.

12                  COUNCIL MEMBER WATSON: Right --  
13                  that's right.

14                  THE WITNESS: Not that you could not  
15                  contract to do it, but you would need a separate  
16                  agreement. A prudent lawyer would have protected him  
17                  -- his or herself with a separate agreement with  
18                  regard to Christine Beatty and those items that are  
19                  listed here, the issues concerning the bank and the  
20                  financing of her home and so forth.

21                  And so to the degree that she had a  
22                  lawsuit against Mr. Stefani and his clients, Mr.  
23                  Brown and Mr. Nelthrope; that should have been a  
24                  separate agreement, and signed by those parties.

25                  COUNCIL MEMBER WATSON: That's right.

1 THE WITNESS: Because their lawsuit  
2 was against them, not against the City. So there's  
3 nowhere in this Confidentiality Agreement where the  
4 parties are listed as the City of Detroit.

5 COUNCIL PRESIDENT COCKREL: I know I  
6 said I just had one question, but that's prompted  
7 one, possibly two follow-up questions that I have to  
8 ask, and that --

9 THE WITNESS: Yes, sir.

10 COUNCIL PRESIDENT COCKREL: -- would  
11 still keep me within my four question limit.

12 THE WITNESS: Yes, sir.

13 COUNCIL PRESIDENT COCKREL: It just  
14 went out of my head that quick. Well, first off, Mr.  
15 Goodman, do you concur with that, that that might be  
16 an issue?

17 MR. GOODMAN: That what might be an  
18 issue.

19 COUNCIL PRESIDENT COCKREL: What Mr.  
20 Edwards has just outlined relative to the second  
21 settlement perhaps not being lawful --

22 MR. GOODMAN: Oh --

23 COUNCIL PRESIDENT COCKREL: -- suggest  
24 that you make a note of that and we either have you  
25 evaluate that, or possibly have an outside attorney -

1 -

2 MR. GOODMAN: Yes, I have noted that.  
3 That's an issue that has not been articulated quite  
4 that way until now, but it's been -- it's run  
5 throughout these proceedings for several days, and so  
6 I'm well aware of it, and I intend, and I think I  
7 indicated I've been asked by several members whether  
8 I might be willing to look into researching and  
9 preparing a memo along those lines. I will do so. I  
10 actually have a question for Mr. Edwards along those  
11 lines.

12 COUNCIL PRESIDENT COCKREL: As I said  
13 I've -- the other question I had has flown out of my  
14 head, so I'll just move on to other Council members.  
15 I -- if it reoccurs to me, I'll just jump -- put  
16 myself back on the list.

17 Council Member Cockrel is next.

18 COUNCIL MEMBER COCKREL: Thank you.

19 Back on the settlement agreement, in  
20 terms of Mr. -- Ms. Colbert-Osamuede, is it fair to  
21 say that she had an -- a duty to reasonably ascertain  
22 what the City's rights would be in any of the  
23 subsequent documents -- that she had signed, because  
24 of -- because of the rights that the City had in this  
25 first settlement agreement?

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THE WITNESS: Yes.

COUNCIL MEMBER COCKREL: And that that is something that the -- that the testimony at this juncture would appear to indicate -- does not appear to have been done.

THE WITNESS: Yes.

COUNCIL MEMBER COCKREL: By virtue of the second -- the Confidentiality Agreement --

THE WITNESS: Yes.

COUNCIL MEMBER COCKREL: Okay. Then lastly, Mr. Edwards, you -- your testimony today has -- has -- is for me very enlightening on the notion that there are routinely confidentiality agreements in city cases. My question -- both to you and -- and to Mr. Goodman in terms of long term, would it not be fair to say that should a query be put by anyone that a confidentiality agreement attached to a case settled by the city would be FOIA-able, because, you know, we're governed by the -- the Freedom of Information Act.

THE WITNESS: Yes.

COUNCIL MEMBER COCKREL: And that would be a -- a -- you indicated that in your experience, the confidentiality agreements are part of the actual settlement document. So if somebody

1 knew that the FOIA (inaudible) then that would be  
2 reasonable?

3 THE WITNESS: Yes.

4 COUNCIL MEMBER COCKREL: Okay. So we  
5 have -- so in your experience, just to clarify again,  
6 we've had many confidentiality agreements that have  
7 been a part of your settlements of -- before or after  
8 judgment with the City of Detroit, that have been  
9 part of the whole settlement agreement itself?

10 THE WITNESS: I will -- I will put it  
11 more broadly than that, Member Cockrel. I have  
12 settled hundreds -- several hundreds of cases for  
13 many years that contain confidentiality agreements.  
14 I have never experienced a separate confidentiality  
15 agreement. There's no reason --

16 COUNCIL MEMBER COCKREL: Sure. And so  
17 then if could now address the question in terms of  
18 public policy concern of the FOIA-ability of those  
19 confidentiality agreements should they be sought,  
20 which appears to be at issue in this circumstance  
21 because for whatever reason, the Free Press was FOIA-  
22 ing matters which is why I began to think that the  
23 settlement number one became unviable (inaudible)  
24 settlement number one became non-viable because of  
25 what it contained and it's FOIA-ability as against

1 separating out the so-called confidentiality  
2 agreement and then having as (inaudible) document are  
3 sort of routine, here's the money, here's what we're  
4 going to pay settlement, that was approved by the  
5 Council.

6 THE WITNESS: That is certainly one  
7 reasonable interpretation.

8 COUNCIL MEMBER COCKREL: Okay. Thank  
9 you, Mr. President.

10 COUNCIL PRESIDENT COCKREL: President  
11 Pro Tem?

12 COUNCIL PRESIDENT PRO TEM CONYERS:  
13 Thank you.

14 Mr. Edwards --

15 THE WITNESS: Yes.

16 COUNCIL PRESIDENT PRO TEM CONYERS: --  
17 to be -- that's my son's name; his name is Carl --

18 THE WITNESS: (Inaudible)

19 COUNCIL PRESIDENT PRO TEM CONYERS:  
20 Yeah, after my husband's brother.

21 THE WITNESS: Yeah -- I have great  
22 respect for your husband, as you know.

23 COUNCIL PRESIDENT PRO TEM CONYERS:  
24 Thank you. These are basically all of your opinions  
25 and views based upon your years of service as a

1 lawyer, correct?

2 THE WITNESS: Yes. That's all I'm  
3 doing. I'm -- I was asked essentially, President Pro  
4 Tem, to come and act as an expert witness. Michigan  
5 Rules of Evidence 702, we have expert witnesses all  
6 the time --

7 COUNCIL PRESIDENT PRO TEM CONYERS:  
8 Yes.

9 THE WITNESS: -- in the work that we  
10 do, and as you know, one of the basis or -- or the  
11 rule contemplates that if you have certain  
12 experiences, you have certain knowledge, certain  
13 skills, you have certain training, then you can offer  
14 your testimony as an expert witness.

15 COUNCIL PRESIDENT PRO TEM CONYERS:  
16 Yes.

17 THE WITNESS: When I was asked to do  
18 that, it's precisely within that framework that I  
19 agreed to testify.

20 COUNCIL PRESIDENT PRO TEM CONYERS:  
21 Okay. Now my next question to you is although you  
22 would not have drafted a confidentiality agreement  
23 this way, could the people who have done it found no  
24 problem with the way it was done; is this the norm  
25 how this confidentiality is done, or is this not the

1 norm?

2 THE WITNESS: Let me take it in  
3 reverse order. It's not the norm.

4 COUNCIL PRESIDENT PRO TEM CONYERS:  
5 Okay.

6 THE WITNESS: However, a lawyer, in  
7 serving his client, serves that client within his own  
8 skill, training, or her own skills and training, and  
9 whatever their tactics are or whatever their strategy  
10 is, it's always part of what we do. We have a game  
11 plan. A lawyer without a game plan is going to be a  
12 losing lawyer. There's a game plan. There is a  
13 strategy. And the question is, what was the lawyer's  
14 strategy in serving -- in -- in developing this  
15 agreement, the separate agreement?

16 COUNCIL PRESIDENT PRO TEM CONYERS:  
17 (Inaudible)

18 THE WITNESS: Yes. That's -- that's  
19 the issue.

20 COUNCIL PRESIDENT PRO TEM CONYERS:  
21 Yes.

22 THE WITNESS: And you are the fact-  
23 finders; you'll determine what that game plan was,  
24 not me.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Now, my third question is this; you laid out ways in  
2 which if there's something found that we could sue  
3 the Mayor and sue the lawyers, and this body had a  
4 duty also to do their due diligence when it came to  
5 the lawyers from the Law Department presenting that -  
6 - presenting it to us and asking questions. The  
7 lawyers stated that when they presented that  
8 information, that this body asked no questions.  
9 Could there also be, whereas you said that this -- we  
10 as a body could sue the lawyers and the Mayor to get  
11 our money back, the citizens of the City of Detroit  
12 can sue this body and have us help pay it back  
13 because they may feel we didn't do our due diligence  
14 also.

15 COUNCIL MEMBER WATSON: They can sue  
16 you. I don't know --

17 COUNCIL PRESIDENT PRO TEM CONYERS:  
18 Excuse me, Madame -- interrupt me -- interrupting me  
19 and bamboozle -- interrupt me. Now, everybody knows  
20 I used to (inaudible) because I'm not disrespectful  
21 to you like that --

22 COUNCIL PRESIDENT COCKREL: Colleagues  
23 -- colleagues -- President Pro Tem does have the  
24 floor.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1                    Could you answer my question please?

2                    COUNCIL PRESIDENT COCKREL:  No more

3                    interruptions please.

4                    THE WITNESS:  Yes, I can.  You're

5                    doing your due diligence presently, in my opinion.

6                    COUNCIL PRESIDENT PRO TEM CONYERS:

7                    Well, now.

8                    THE WITNESS:  Yes.

9                    COUNCIL PRESIDENT PRO TEM CONYERS:

10                   But when it all came about, there -- no questions

11                   were asked.  Although some people voted no --

12                   THE WITNESS:  You didn't have all the

13                   information --

14                   COUNCIL PRESIDENT PRO TEM CONYERS:  --

15                   others did not.

16                   THE WITNESS:  You didn't have all the

17                   information.

18                   COUNCIL PRESIDENT PRO TEM CONYERS:

19                   But given the information we had, no one asked

20                   questions.

21                   THE WITNESS:  That's not the issue.

22                   That's the --

23                   COUNCIL PRESIDENT PRO TEM CONYERS:  As

24                   you see it?

25                   THE WITNESS:  Yes.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Okay. But that -- but there's -- there's a possibility that citizens could do that?

THE WITNESS: Very definitely.

COUNCIL PRESIDENT PRO TEM CONYERS:

Thank you. No more questions.

COUNCIL PRESIDENT COCKREL: There's one question that I do have for you; another question for you, Mr. Edwards.

THE WITNESS: Yes, sir.

COUNCIL PRESIDENT COCKREL: It's actually a follow-up to the question you were just asked -- one of the first questions you were just asked. You were asked whether or not everything you've shared was -- are your views and opinions, and you said yes.

THE WITNESS: Yes.

COUNCIL PRESIDENT COCKREL: But just for the purpose of clarity; just to make sure I'm clear and -- make sure that everybody is clear. Those views and opinions are formed by your 30-plus years of practicing law and adhering to -- to the law and to the rules and procedures and ethical guidelines that are -- are to cover the conduct of any lawyer, correct?

1 THE WITNESS: Yes. All over -- not  
2 just in the city of Detroit and county of Wayne, but  
3 as many of you know, all over the state of Michigan  
4 and the country.

5 COUNCIL PRESIDENT COCKREL: And I say  
6 that because I think that's important because, I mean  
7 I could say it's my view that it's okay to murder  
8 somebody, but --

9 THE WITNESS: Yes.

10 COUNCIL PRESIDENT COCKREL: -- we all  
11 know that murder is against the law.

12 THE WITNESS: Yeah. No, this is based  
13 on --

14 COUNCIL PRESIDENT PRO TEM CONYERS:  
15 Well, I did say based upon your experience --

16 THE WITNESS: -- several --

17 COUNCIL PRESIDENT COCKREL: With all  
18 due respect, President Pro Tem --

19 COUNCIL PRESIDENT COCKREL: No. I  
20 just want -- I said based on his experience --

21 COUNCIL PRESIDENT COCKREL: Well, you  
22 just -- well, you just jumped on another Council  
23 member about interrupting --

24 COUNCIL MEMBER WATSON: Sure did.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 She attacked me, and I didn't attack --

2 COUNCIL PRESIDENT COCKREL: I have the

3 floor --

4 COUNCIL PRESIDENT PRO TEM CONYERS: We

5 know you do, but I said based upon his years of

6 experience --

7 COUNCIL PRESIDENT COCKREL: I have the

8 floor, President Pro Tem --

9 COUNCIL PRESIDENT PRO TEM CONYERS:

10 (Inaudible)

11 COUNCIL PRESIDENT COCKREL: I don't

12 want to hear you anymore.

13 COUNCIL PRESIDENT PRO TEM CONYERS:

14 And you don't have to hear me. We don't have to hear

15 you.

16 COUNCIL PRESIDENT COCKREL: Then be

17 quiet.

18 COUNCIL PRESIDENT PRO TEM CONYERS:

19 No, you --

20 COUNCIL PRESIDENT COCKREL: -- because

21 I'm speaking and I'm asking the questions.

22 COUNCIL PRESIDENT PRO TEM CONYERS: --

23 and you do that at home, not here.

24 COUNCIL PRESIDENT COCKREL: I am not

25 your father, but I am --

1 COUNCIL PRESIDENT PRO TEM CONYERS:  
2 (Inaudible)  
3 COUNCIL PRESIDENT COCKREL: -- the  
4 President and right now I have the floor.  
5 COUNCIL PRESIDENT PRO TEM CONYERS: --  
6 because I'm tired of that. Be respectful. You may  
7 not do that at home, but you don't do it up in here.  
8 COUNCIL PRESIDENT COCKREL: Stop  
9 interrupting.  
10 COUNCIL PRESIDENT PRO TEM CONYERS:  
11 You grow up. Control your house and you now how to  
12 do that (inaudible) --  
13 COUNCIL PRESIDENT COCKREL: -- last  
14 one to talk.  
15 COUNCIL PRESIDENT PRO TEM CONYERS:  
16 I'm the first one to talk -- Shrek.  
17 COUNCIL PRESIDENT COCKREL: Shrek?  
18 COUNCIL MEMBER COLLINS: You're out of  
19 order.  
20 COUNCIL PRESIDENT PRO TEM CONYERS: --  
21 the first one -- don't disrespect me.  
22 COUNCIL MEMBER COLLINS: You're out of  
23 order --  
24 COUNCIL PRESIDENT COCKREL: I will  
25 call this to adjourn --

1 COUNCIL PRESIDENT PRO TEM CONYERS: Do  
2 it --  
3 MULTIPLE SPEAKERS: (Talking over)  
4 COUNCIL PRESIDENT COCKREL: We're  
5 going to take a brief recess --  
6 (WHEREUPON, a brief recess was taken  
7 from 12:28 p.m. to 12:30 p.m.)  
8 COUNCIL PRESIDENT COCKREL: Mr.  
9 Edwards?  
10 THE WITNESS: Yes?  
11 COUNCIL PRESIDENT COCKREL: I have one  
12 final question for you, and then we're going to talk  
13 about breaking for lunch.  
14 THE WITNESS: All right.  
15 COUNCIL PRESIDENT COCKREL: Meeting of  
16 the Whole, we are reconvened, and I have one last  
17 follow-up question for Mr. Edwards.  
18 Could you just briefly cite some of  
19 the laws, at least here in the state of Michigan,  
20 some of the laws, some of the ethical guidelines,  
21 rules of procedure that govern all attorneys? You  
22 spoke to some of them earlier, and you actually read  
23 from one of them. Could you just cite some of the  
24 others?  
25 THE WITNESS: The -- every court that

1           you practice in, state or federal, has rules of  
2           procedures that govern them, what attorneys can and  
3           cannot do. Those rules are readily available. For  
4           example, in the state court, the Michigan Rules of  
5           Court --

6                       COUNCIL PRESIDENT PRO TEM CONYERS:

7           Yes.

8                       THE WITNESS: In the federal court,  
9           you have its counterpart, the Federal Rules of Court.  
10          I brought with me the -- the State Bar Journal. It  
11          contains the Code of Professional Responsibility, and  
12          as I indicated, there's something called the Michigan  
13          Rules of Evidence. All of these are sources of rules  
14          that govern us, and there are also local court rules  
15          in addition to the broader court rules that govern  
16          us, and govern any attorney, and their conduct.

17                      COUNCIL PRESIDENT COCKREL: I have no  
18          further questions for you at this time. If there are  
19          no further questions for Mr. Edwards, I think we can  
20          --

21                      COUNCIL MEMBER COLLINS: Mr. President  
22          -- Mr. President, do you remember your other  
23          questions?

24                      COUNCIL PRESIDENT COCKREL: I'll do it  
25          later --

1 COUNCIL MEMBER COCKREL: Motion to  
2 adjourn.  
3 COUNCIL PRESIDENT COCKREL: All right.  
4 Motion -- motion to adjourn takes precedence --  
5 COUNCIL MEMBER COLLINS: (Inaudible)  
6 COUNCIL PRESIDENT COCKREL: Is there  
7 support? Then we should -- probably come back then,  
8 Mr. Goodman, shall we say 1:30, 2:00 o'clock?  
9 MR. GOODMAN: -- looking at our next  
10 witness, 2:00 o'clock?  
11 COUNCIL PRESIDENT COCKREL: Two  
12 o'clock gives us a little bit more time. Move to  
13 support -- the move in support to adjourn to 2:00  
14 p.m.?  
15 UNIDENTIFIED SPEAKER: Aye.  
16 MR. GOODMAN: May -- may Mr. Edwards  
17 retire --  
18 COUNCIL PRESIDENT COCKREL: Yes, Mr.  
19 Edwards, you may be excused. Thank you.  
20 (WHEREUPON, a brief recess was taken  
21 from 12:31 p.m. to 2:07 p.m.)  
22 COUNCIL PRESIDENT COCKREL: Good  
23 afternoon.  
24 MULTIPLE SPEAKERS: Good afternoon.  
25 COUNCIL PRESIDENT COCKREL: I would

1 like to call our Detroit City Council Committee of  
2 the Whole meeting back to order, and once again, the  
3 purpose of these meetings is for our investigative  
4 hearings on the issue of Brown, Nelthrope, and Harris  
5 versus the City of Detroit, and we are moving towards  
6 drawing this to a close, we hope.

7 Our final witness for this hearing  
8 process, at least for the moment, is -- Corporation  
9 Counsel, John Johnson, who is here. So the format  
10 that we will follow will be consistent with the  
11 process that we have been using throughout these  
12 hearings. We will begin with an initial set of  
13 questioning from Attorney Bill Goodman, and then  
14 following that, we will go to questions from Council  
15 members.

16 Mr. Johnson, good afternoon.

17 MR. JOHNSON: Good afternoon, Mr.  
18 President.

19 COUNCIL PRESIDENT COCKREL: First item  
20 of business is we need to have the oath administered  
21 to you, so if you could stand up and step to --  
22 directly in front of Ms. Monte.

23 COURT REPORTER: Raise your right  
24 hand. Do you solemnly swear or affirm to tell the  
25 truth, the whole truth, and nothing but the truth, so

1 help you God?

2 MR. JOHNSON: Yes, I do.

3 COUNCIL PRESIDENT COCKREL: And for  
4 the purpose of the record, before we proceed, Mr.  
5 Johnson, I see you've got, I assume, an attorney here  
6 with you; would you like to introduce him for the  
7 record?

8 THE WITNESS: This is attorney Gerald  
9 K. Evelyn.

10 MR. EVELYN: Good afternoon. With  
11 your permission, Mr. President, before we proceed,  
12 I'm just going to indicate, if I may --

13 COUNCIL PRESIDENT COCKREL: Let me  
14 check in with Mr. Goodman first, and I assume -- has  
15 this been worked out with you, Mr. Goodman?

16 MR. GOODMAN: Yes. Mr. Evelyn wishes  
17 to make a statement with regard to certain areas that  
18 -- where the issue of privilege may assert itself and  
19 at least provide some guidelines for counsel and for  
20 me in terms of my questioning of the witness, and I  
21 think it's not only should be allowed, I think it's a  
22 good idea.

23 COUNCIL PRESIDENT COCKREL: That's  
24 fine. You may proceed, Mr. Evelyn. Am I saying your  
25 name correctly?

1 MR. EVELYN: Yes, Mr. President; thank  
2 you.

3 Let me just indicate and this is to  
4 expedite matters, as has been placed on the record  
5 before with other witnesses, there are parallel --  
6 investigations and inquiries going on right now in  
7 this matter which for that reason require witnesses  
8 in the situation that Council's in to interpose  
9 privilege. I've discussed this earlier with Mr.  
10 Johnson, and it's his desire to give full and  
11 complete answers today, and so what I want the  
12 Council to know is that where there may be a right to  
13 interpose a privilege, he may choose not to, because  
14 his desire is to be complete and open. If it is  
15 absolutely necessary, we will do so. But I want you  
16 to know that his intention is to answer questions as  
17 fully -- and in some instances there's some areas  
18 where he might be entitled to impose privilege, but  
19 he will not do so.

20 COUNCIL PRESIDENT COCKREL: I'm sorry;  
21 could you repeat the last statement? There's some  
22 areas where he might be entitled to impose what?

23 MR. EVELYN: Look to impose a  
24 privilege and not answer the question, and he's gonna  
25 choose, as much as possible, to not do that, because

1 of a desire to be complete and open.

2 COUNCIL PRESIDENT COCKREL: And we  
3 appreciate that. Thank you.

4 Mr. Goodman, the floor is yours.

5 MR. GOODMAN: Yes. Mr. Johnson has  
6 asked if he may preliminarily, as with Mr. McCargo --  
7 as we did with Mr. McCargo, be allowed to read a  
8 statement to Council?

9 COUNCIL PRESIDENT COCKREL: Yes,  
10 absolutely. You may proceed.

11 THE WITNESS: Thank you.

12 First, I would like to thank this  
13 honorable body for the opportunity to come before you  
14 to discuss my role in the settlement of the Brown,  
15 Nelthrope, and Walter Harris cases. For a little  
16 more than two years, I've been honored to serve this  
17 City as Corporation Counsel. It is the position that  
18 I dreamed of holding for more than 20 years between -  
19 - before being appointed by Mayor Kwame Kilpatrick  
20 and unanimously confirmed by this honorable body. It  
21 is a position of trust, and one that I have always  
22 taken very seriously.

23 The events of the past 11 weeks have  
24 caused unimaginable divisions within the city  
25 government and our community; however, I am confident

1           that these wounds will heal and everyone will  
2           eventually be able to devote their entire attention  
3           to leading and continuing to move this city forward.

4                       The Charter of the City of Detroit  
5           vests -- vests its powers in this honorable body, and  
6           it has chosen to exercise its duty by conducting  
7           these hearings. I hope that at the conclusion, you  
8           will not only have a fuller understanding of the  
9           events surrounding the settlement of the cases, but  
10          can use the information to provide constructive  
11          insight into how the Law Department and this Council  
12          can work together to provide you with the information  
13          you need to make informed decisions.

14                      Yesterday's testimony of Samuel  
15          McCargo and Valerie Colbert-Osamuede was particularly  
16          invaluable, because it helped to emphasize the  
17          following facts. One, although it was our original  
18          intention to appeal the Brown verdict, an  
19          investigation into jury misconduct did not yield the  
20          hoped for results. Two, it was the considered view  
21          of the Law Department that the Brown verdict would  
22          negatively impact the Walter Harris matter and result  
23          in a similar outcome. Three, a global settlement of  
24          this matter had been the subject of discussion among  
25          defense attorneys prior to Mr. Stefani's revelation

1           that he had obtained the text messages. Four, there  
2           was no deliberate attempt by any attorney involved in  
3           this settlement to hide information from the Council.  
4           Five, confidentiality agreements are not unusual in  
5           employment-related lawsuits, and have never been  
6           brought to the attention of this Council, even when  
7           it concerned other branches of government. Six,  
8           settlement agreements are not quote "set in stone"  
9           end quote, and are often modified, even after this  
10          body has approved the monetary payoff. Seven, the  
11          settlement documents forwarded to the Council in --  
12          in this matter were patterned after hundreds sent by  
13          the Law Department in the past, and finally, on  
14          October 17th, 2007, the defense attorneys, who  
15          combined have more than 80 years of trial experience,  
16          recommend a settlement that resolved all claims,  
17          saved the City further expense, and that everyone  
18          involved believed was in the best interests of the  
19          City of Detroit.

20                       I believe that the attorneys who  
21                       worked on the Brown case did an outstanding job.  
22                       Within the Law Department, the management of the  
23                       Brown and Harris cases were left in the very capable  
24                       hands of the former deputy corporation counsel,  
25                       Brenda Braceful, and labor and employment chief,

1 Valerie Colbert-Osamuede, both of whom are litigation  
2 experts, and in whom I had complete trust. I became  
3 involved in this matter shortly after the trial began  
4 -- shortly before the trial began in August 2007, and  
5 years after the commencement of the litigation.  
6 Following Ms. Braceful's resignation in August 2007,  
7 Ms. Colbert-Osamuede reported directly to me.  
8 Because the deputy corporation counsel position  
9 remains vacant, she still does. During the past  
10 eight months, she has proven herself to be a person  
11 of high integrity and competence. Given her  
12 experience, I turned to her for guidance and advice  
13 in several matters. Nonetheless, she is a  
14 subordinate, and I am the Corporation Counsel.

15 The Brown and Harris cases were  
16 settled with my approval. I gave that approval after  
17 consultation with the defense attorneys and an  
18 evaluation of the situation. Despite media  
19 characterization and in some instance  
20 mischaracterization, the decision was made in the  
21 best interests of the City of Detroit.

22 Within the limits of the law, I'm here  
23 to fully comply with your inquiry, as I have  
24 endeavored to do so with other governmental agencies  
25 that have properly sought information in regards to

1           this matter. Consequently, I come before you now to  
2           answer questions and explain my role in the process.

3                   COUNCIL PRESIDENT COCKREL: All right.  
4           Mr. Goodman, the floor is yours.

5                   MR. GOODMAN: Thank you, Mr.  
6           President. Good afternoon, Mr. Johnson.

7                   THE WITNESS: Good afternoon, Mr.  
8           Goodman.

9                   JOHN JOHNSON

10           DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

11                   EXAMINATION

12           BY MR. GOODMAN:

13           Q       I want to indicate that I appreciate your being here,  
14                   and also indicate that you and I have spoken about  
15                   these matters on several occasions; is that correct?

16           A       That's correct.

17           Q       And our conversations have been at times full and  
18                   complete, and vociferous.

19           A       Yes.

20           Q       And I appreciate your cooperation throughout the  
21                   process, I want to tell you that.

22           A       You're welcome.

23           Q       I have subpoenaed a number of documents, but I'm  
24                   particularly interested in one set of documents,  
25                   which I asked you, and you said you would provide me

1 with that information sometime next week; is that  
2 correct, sir?

3 A That's correct.

4 Q And just so members of Council are aware of that;  
5 what I asked you to determine for me was to find out  
6 how many cases, how many settlements there have been  
7 within the last five years of cases following a jury  
8 verdict or a verdict, let us say, and what the  
9 amounts of the verdict were and what the amounts of  
10 the settlement were; is that your understanding of  
11 the subpoena?

12 A Yes, it is.

13 Q So, we will follow-up with the specific information  
14 for members of Council in the report that I file  
15 later, but I appreciate your working on that as well.  
16 Would you, just for the record, of course, say your  
17 name for the jury and how many years -- for the  
18 members of the Council, excuse me; I keep slipping  
19 into terrible --

20 A I understand.

21 Q Say your name for the record and how many years  
22 you've been a licensed attorney in the state of  
23 Michigan.

24 A John E. Johnson, Junior, licensed for 29 years.  
25 1979.

1 Q And before we go -- I knew you when you were in law  
2 school.

3 A That's correct.

4 Q Of the -- of that period of time, how long have you  
5 been Corporation Counsel for the City of Detroit?

6 A About two and one-quarter years.

7 Q Before that time, you were in private practice?

8 A No. Immediately before that, I served as deputy  
9 director of the Legal Aid and Defenders Association.  
10 Before that, executive director of the Detroit NAACP.

11 Q And before that?

12 A Before that, chief counsel of the civil division of  
13 Legal Aid Defenders Association. Before that, a  
14 manager of the UAW Legal Services Plans, and before  
15 that, I served as deputy director of Wayne County --  
16 Legal Services.

17 Q So never in private practice?

18 A Never in private practice, no.

19 Q I want to go over some of the points that you made in  
20 your presentation and ask you some questions about  
21 it. You indicate that it was your original intention  
22 to appeal the Brown verdict; is that right?

23 A That's correct.

24 Q When was that intention formed?

25 A Immediately after the verdict.

1 Q After the verdict?

2 A Yes.

3 Q And there were statements made by the Mayor that  
4 there was a strong intention and likelihood of an  
5 appeal; is that correct?

6 A That's correct.

7 Q Now, within eight days after the verdict, or eight  
8 days after the verdict, you came in front of this  
9 body in a closed session; is that correct?

10 A That's correct.

11 Q And you have -- since we have unsealed the minutes of  
12 that closed session, you have the minutes of that  
13 meeting --

14 A Yes, I do.

15 Q -- and you've reviewed them; is that right?

16 A Yes, I have.

17 Q Did you indicate at that time that it was your strong  
18 intention to appeal the verdict?

19 A Yes, I did.

20 Q Well, it's interesting. I -- in my review of those  
21 notes, I did not see that statement. I saw  
22 statements to the effect that you wanted to review  
23 the transcript, sit down with your team, sit down  
24 with your appellate lawyers, and take a look at the  
25 situation, and based upon those considerations, make

1 a decision. But I didn't see anywhere in there were  
2 you said you intended to appeal. Did -- now you can  
3 correct me, or find somewhere in there where I'm in -  
4 - in -- and show me that I'm wrong, I would  
5 appreciate that.

6 A It probably was implied in the statements that I  
7 made. But certainly, you're right. It did indicate  
8 that we had not received -- had not received the  
9 transcripts yet; that those had to be reviewed. That  
10 a result of those review then a decision would be  
11 made on which issues we would appeal, but -- so it  
12 was qualified to that extent, but I did indicate that  
13 I thought that it needed to be appealed because of  
14 the precedents that might be set.

15 Q I think you did indicate that the precedent that --  
16 that was involved was an important one, and the  
17 principle involved was an important one, and that  
18 would be a strong factor in favor of an appeal; I  
19 agree, and I saw that in there. Do you want to  
20 explain that just a little bit more -- what -- what  
21 did you mean by that principle, what were you  
22 referring to?

23 A Well, as we saw it, the -- as the higher courts had  
24 ruled, extending the whistleblower liability to in-  
25 house memorandum, that we thought that it would

1 subject more people than we wanted to to perhaps  
2 frivolous whistleblower lawsuits.

3 Q In other words, what I interpreted you to mean was  
4 that the -- the impetus for this particular lawsuit  
5 was the fact that the memorandum had been filed by  
6 Deputy Chief Brown or Mr. Nelthrope, or both of them,  
7 and that that memorandum had generated some kind of  
8 employment -- some response with regard to their  
9 employment, and that anytime somebody had a negative  
10 action with regard to their employment, they -- all  
11 they needed to do is write a memorandum, have a  
12 whistleblower case, and know that at the end of the  
13 line the City of Detroit was standing there ready to  
14 pay for a substantial settlement in that case. That  
15 was your concern; is that right, sir?

16 A That's correct.

17 Q All right. Going back to your written statement, it  
18 then says although it was our original intention to  
19 appeal the Brown verdict, an investigation into jury  
20 misconduct did not leave -- did not yield the hoped-  
21 for result; what did you mean by that?

22 A Well, we had received information that perhaps there  
23 were some jurors who may not have been residents of  
24 the county, and some other jurors may have been  
25 tainted, but Mr. McCargo did an investigation, which

1 he didn't share the results of with me, determined  
2 that -- that those issues were not as meritorious as  
3 we had hoped.

4 Q So, that because of -- due to that investigation, you  
5 altered your original intention, and it was no longer  
6 your intention, once you learned that, to appeal the  
7 Brown verdict; is that a fair statement?

8 A Well, it certainly affected our position. We had not  
9 yet received the transcripts, so that still would  
10 have had an impact.

11 Q I know that the issue of juror misconduct came up in  
12 the course of the September 19th closed session. I  
13 believe that Member Watson raised it in colloquy with  
14 you; is that correct, sir?

15 A Yes.

16 Q Was there anywhere in there that you indicated that  
17 you were engaged in that investigation of juror  
18 misconduct and that the outcome of that investigation  
19 could alter your intention with regard to appeal?

20 A I don't believe so.

21 Q Point three in your written remarks here states a  
22 global settlement of this matter had been the subject  
23 of discussion among defense counsel prior to Mr.  
24 Stefani's revelation that he had obtained the text  
25 messages, correct?

1 A Yes.

2 Q When had that matter been discussed prior to Mr.  
3 Stefani's revelation?

4 A I'm relying on Ms. Colbert-Osamuede's testimony. I  
5 was there when she testified that there had been some  
6 discussion of that just prior to Mr. Stefani passing  
7 the envelope -- calling Mr. McCargo out -- out of the  
8 room, actually.

9 Q So your statement is really based upon her testimony  
10 --

11 A Right.

12 Q -- not as a result of your experience?

13 A No, I wasn't there.

14 Q You had never been involved up until the time that --  
15 I guess it -- Ms. Colbert-Osamuede called you. Up  
16 until that time, you had never been involved in  
17 settlement -- global discussion after the verdict; is  
18 that right?

19 A That's right.

20 Q When was the investigation of the alleged juror  
21 misconduct completed by Mr. McCargo?

22 A I'm not sure.

23 Q But it was before that day, the day of the  
24 facilitation, which would be October 17th, 2007?

25 A I believe so.

1 Q Up until that time, the principle that you had  
2 articulated of the importance of not -- withdraw  
3 that. You earlier articulated the principle based  
4 upon which you felt an appeal might be wisely and  
5 strongly based, which was that you didn't want to  
6 make it easy for people to bring frivolous cases.  
7 That had not changed up until the 17th, had it?

8 A That wasn't a basis for the appeal; it was just a  
9 feeling I had.

10 Q But it was a -- it was a -- a strong policy sense  
11 that drove your belief that the case should not be  
12 easily settled; is that right, sir?

13 A That was one of them, yes.

14 Q In fact, and I -- and I know it's easy to throw words  
15 in someone's face at -- which are, you know, stated  
16 contemporaneously, but you felt that your -- settle  
17 the case because of this policy consideration, the  
18 plaintiffs -- the plaintiffs would have to make an  
19 awfully, awfully, awfully, awfully attractive offer;  
20 is that correct, sir?

21 A Those are my remarks, yes.

22 Q And the -- as I said, that -- that principle, that  
23 policy issue that had guided your direction up until  
24 that time had not changed. The policy remained the  
25 same; you were still concerned about frivolous

1           whistleblower cases, even on the 17th of October when  
2           this particular case was settled; isn't that a fair  
3           statement?

4       A     Yes.

5       Q     In addition, nothing that changed with regards to the  
6           transcript being prepared. The transcript had not  
7           yet been prepared, and you or your -- nor your  
8           appellate lawyers had -- had an opportunity to review  
9           it; I'm right about that also?

10      A     That's correct.

11      Q     In fact, had the transcript even been ordered at that  
12           point?

13      A     I don't believe so.

14      Q     And certainly post-verdict motions, such as motions  
15           for a trial notwithstanding the verdict, or motions  
16           for new trial had not been filed?

17      A     I don't believe --

18      Q     Had you talked about filing such motions?

19      A     The defense attorneys had. I hadn't really been  
20           involved in those discussions before.

21      Q     Now, I want to talk about some of the things you said  
22           in here about confidentiality agreements, and start  
23           with your observation that quote "confidentiality  
24           agreements are not unusual in employment-related  
25           lawsuits, and have never been brought to the

1 attention of this Council, even when it concerns  
2 other branches of city government"; that's your  
3 statement, is that right?

4 A Right. That's based upon Ms. Colbert-Osamuede's  
5 testimony.

6 Q So you're relying upon what she said in that regard?

7 A Yes. She's the chief of labor and employment  
8 section.

9 Q Do you know whether in any case other than this  
10 particular case, the confidentiality agreements that  
11 have been negotiated in any of these settlements,  
12 were separate agreements than the entire settlement  
13 agreement and release that was negotiated? Do you  
14 understand my question?

15 A I -- I believe I do, yes. And I believe yes, I am  
16 aware of -- of a case, yes.

17 Q A case involving the City of Detroit?

18 A Yes.

19 Q When you were Corporation Counsel?

20 A No, not when I was Corporation Counsel.

21 Q You're aware of one case?

22 A Yes.

23 Q How long ago?

24 A I'm not sure of the date; it may have been 2001, but  
25 I'm not sure. Just something that I've been -- that

1 has been brought to my attention by Ms. Colbert-  
2 Osamuede.

3 Q Have you taken a look at the -- that file at all, or  
4 the records, or the agreements in that case?

5 A No, I have not.

6 Q I would ask that you provide Council with copies of -  
7 - of -- of those papers after this hearing concludes.  
8 You can consult with counsel --

9 A I'll do that.

10 Q -- that is a request that Council makes to you for  
11 those papers. Other than that one situation, are you  
12 aware of any other cases where the confidentiality  
13 agreement has been split off from the rest of the  
14 settlement agreement?

15 A No, no specific cases, just that Ms. Colbert-Osamuede  
16 has advised me that that is common in her practice.

17 Q To split the agreements in half, to have a separate  
18 confidentiality agreement?

19 A To split the agreements in -- in half --

20 Q In other words, my -- let me re -- Mr. Johnson, let  
21 me step back --

22 A Okay.

23 Q What I'm saying is you're aware in this case that  
24 there were essentially two agreements; one was the  
25 settlement agreement which -- which set for the

1 monetary terms of the settlement, and the other the  
2 confidentiality agreement, which was called personal,  
3 ad which was signed by Kwame Kilpatrick as such,  
4 Christine Beatty as such, and the plaintiffs; is that  
5 right, sir?

6 A I'm aware of it now, yes.

7 Q Yes, you're aware of it now.

8 A Yes.

9 Q My question to you is, are you aware of any other  
10 case where that has ever been done, other than this  
11 particular situation?

12 A No, not specifically, no.

13 Q You just stated that you're aware of that fact now,  
14 at this time; is that right, sir?

15 A That's correct.

16 Q When did you first become aware of it?

17 A What exactly?

18 Q Of the existence of this separate, private -- so-  
19 called private Confidentiality Agreement?

20 A I specifically became aware of it on January 31st,  
21 2008, following the Michael Stefani deposition.

22 Q Was Ms. Colbert-Osamuede aware of it before that  
23 time?

24 A I don't know. I think she was questioned about that  
25 yesterday.

1 Q She was.

2 A Right. So, I think she testified as to that.

3 Q My question is did you ever ask her whether she was  
4 aware of it before you were aware of it?

5 A No.

6 Q She was questioned about it yesterday, and yesterday  
7 she stated that because in the Brown and Nelthrope  
8 case she was -- well, let me back up for just a  
9 moment. She testified yesterday that she was the --  
10 the lawyer in the Brown and Nelthrope case for the  
11 City of Detroit, and that is correct; is that right,  
12 sir?

13 A That's correct.

14 Q She also testified that she was not only the lawyer  
15 in that case for the Mayor, but that once Mr. McCargo  
16 came on board, she no longer functioned in that  
17 capacity, and as practical and factual matter, she  
18 only represented the City of Detroit; is that your  
19 understanding as well?

20 A Let me back up. Actually, I was aware of it before  
21 the Stefani deposition, because there was discussion  
22 to this with her prior to the deposition. So I was  
23 aware of it.

24 Q Prior to the Stefani deposition --

25 A Mr. Stefani's deposition, yeah. I'm trying to

1 remember now when we had that discussion, and I don't  
2 recall exactly when. But I was -- I was aware of it  
3 now that I -- I think about it.

4 Q Well, let's -- let's --

5 COUNCIL MEMBER COCKREL: Mr.

6 President?

7 COUNCIL MEMBER WATSON: Mr. Goodman?

8 COUNCIL MEMBER COCKREL: Yeah, could  
9 you get -- get clarity here, because I'm now  
10 thoroughly confused about what Mr. Johnson knew.

11 MR. GOODMAN: I'm going to get to  
12 that. I want to put a pin in that for just a moment  
13 --

14 COUNCIL MEMBER COCKREL: Okay.

15 MR. GOODMAN: -- and back up and try  
16 and lay a foundation --

17 COUNCIL MEMBER WATSON: Sure. Please  
18 continue.

19 MR. GOODMAN: All right.

20 BY MR. GOODMAN:

21 Q Now, we just said that -- that she -- while formerly  
22 she was still the Mayor -- excuse me, the attorney  
23 for the Mayor in the Brown Nelthrope case, as a  
24 practical matter, she no longer functioned in that  
25 capacity once McCargo came on board; that's correct?

1 A Yes.

2 Q She was also, however, the attorney for the City and  
3 the Mayor in the Harris case; is that right?

4 A Yes.

5 Q And the only attorney for the -- for the City and for  
6 the Mayor; is that right?

7 A That's correct.

8 Q And the Confidentiality Agreement that was --  
9 eventually came to light after the Stefani  
10 deposition, but that was signed, I believe, either  
11 November 1st or December 5th of '07, by one party or  
12 another, that agreement applied to both cases; is  
13 that right?

14 A That's correct.

15 Q So that Ms. Colbert-Osamuede knew about the  
16 Confidentiality Agreement; that is -- make sure we're  
17 talking about the same thing. You have one of these  
18 binders in front of you?

19 A Right.

20 Q We're talking about the document found in exhibit  
21 nine, or tab nine, called Confidentiality Agreement.  
22 She knew about this document from the time that it  
23 was signed and entered into; is that correct?

24 A That I don't know.

25 Q She was the lawyer, however, for the Mayor in the

1 Harris case at the time this agreement was entered  
2 into; that's correct, is it not?

3 A The lawyer for the Mayor?

4 Q Yes.

5 A I don't believe she was.

6 Q Who was the lawyer --

7 A The Harris case, yes, she was. I'm sorry; I'm  
8 confused.

9 Q When did you first learn of this particular document,  
10 exhibit nine?

11 A Exhibit --

12 Q Tab nine.

13 A Tab nine. And -- I'm -- really don't recall. It may  
14 have been after the text messages were published, but  
15 I do know that I was at some point advised of it, but  
16 I can't recall exactly when.

17 Q Now, the next point --

18 MR. GOODMAN: Does that clear up, at  
19 least -- is that the question, Member Cockrel, that  
20 you were --

21 COUNCIL MEMBER COCKREL: I -- I don't  
22 know. What about the other settlement agreement --

23 MR. GOODMAN: We're getting to that.

24 COUNCIL MEMBER COCKREL: Okay.

25 (Inaudible) I just -- I'm still not clear. You said

1 initially you didn't know about it, now you're saying  
2 you did know about it, but you're not sure when you  
3 knew about it.

4 THE WITNESS: Right. I did know about  
5 it, because I recall discussing this and -- but I  
6 think it was shortly after the -- the story broke,  
7 because I didn't know about a lot of documents until  
8 after the story broke.

9 MR. GOODMAN: All right.

10 BY MR. GOODMAN:

11 Q Let's go back to the documents that I -- you did know  
12 about. There's been a -- a lot of testimony over the  
13 past three days of hearings about this settlement  
14 meeting that occurred on October the 17th, at the  
15 office of Charfoos and Christensen on Woodward Avenue  
16 here in the city of Detroit.

17 A Yes.

18 Q You received a telephone call at some point to attend  
19 that meeting; is that correct?

20 A That's correct.

21 Q Did you know the meeting was happening before you  
22 received that call?

23 A Not really. I can't say I had specific knowledge of  
24 that. They were there, but I don't track the files  
25 or the matters that my attorneys are involved in that

1                   extensively to have known that.

2       Q       Had you had any discussions with either Mr. McCargo,  
3               Mr. Copeland, or Ms. Colbert-Osamuede regarding a  
4               global settlement of this case before the date of  
5               that meeting, before October the 17th?

6       A       No.

7       Q       Had you discussed with them the possibility of  
8               whether the case had -- could be settled?

9       A       Yes.

10      Q       When?

11      A       Probably after the verdict was rendered, certainly  
12              that had been discussed.

13      Q       And did you discuss with them a range that you would  
14              like to see the case settled within?

15      A       My discussions were with Ms. Colbert-Osamuede. I had  
16              no discussions with Mr. McCargo or Mr. Copeland about  
17              that --

18      Q       Did --

19      A       -- she's my chief.

20      Q       Then let's -- let's tighten it up a little bit. Did  
21              you have any discussions with Ms. Colbert-Osamuede  
22              regarding a range within you would have liked to seen  
23              the case settled after the verdict and before the  
24              facilitation?

25      A       It wasn't that specific. I simply mentioned to her

1           that I thought that the matters could be settled, and  
2           that I thought that it could be settled for offering  
3           an amount that was substantially lower than the  
4           verdict. She disagreed.

5       Q     Did you suggest how much lower than the verdict you  
6           thought --

7       A     I think I might have said maybe \$5,000,000.00 or  
8           something, and she said no; she thought there would  
9           be a need to file the paperwork in order to perfect  
10          the appeal.

11      Q     When you suggested an amount something in the range  
12           of \$5,000,000.00, was that an amount that you were  
13           suggesting to her could be offered, or was that a  
14           range within which you thought the case might settle?

15      A     Offered.

16      Q     Do you know whether she, in fact, ever initiated any  
17           attempt to settle the case by offering that kind of  
18           money to the plaintiffs?

19      A     I don't know for sure, but I don't think that ever  
20           happened.

21      Q     You were here yesterday for her testimony; is that  
22           right, sir?

23      A     Yes.

24      Q     You heard her say that there was -- that -- withdraw  
25           that. Did you hear her testify that when she was

1 first -- she and the other lawyers were first  
2 approached about the possibility of global  
3 settlement, they responded by telling Judge  
4 Washington that they had no authority to enter into  
5 such --

6 A Yes, I heard that.

7 Q Did she ever contact you and ask you for authority to  
8 open up those kinds of discussions?

9 A When?

10 Q On that day?

11 A Yes.

12 Q And that was the telephone call to you?

13 A Yes.

14 Q Did she tell you that there was a claim by Mr.  
15 Stefani that these -- that he had access to the  
16 SkyTel text messages when she called you?

17 A Yes.

18 Q What else did -- did she say when she called you?

19 A Simply that there was -- they had offered to settle  
20 both cases and that they -- they had -- she had the  
21 SkyTel messages. That was the extent of the  
22 conversation.

23 Q What did you say?

24 A Probably acted a little surprised. I don't know my  
25 exact reply, but I was surprised to hear that. And

1 she asked me to come to the meeting. I said I would  
2 get there as soon as I could.

3 Q Did she indicate what -- why she thought it was  
4 necessary to have you at the meeting, or did you  
5 understand why it was necessary for you to be there?

6 A She didn't have to say. I understood. She just said  
7 we need you here --

8 Q And you -- you understood that the need for your  
9 presence revolved around the fact that this was a  
10 very high verdict that had been rendered against the  
11 City of Detroit, that was one factor; is that right,  
12 sir?

13 A Yes.

14 Q And that it was a very high profile case?

15 A Yes.

16 Q And that it was a controversial case, not only within  
17 the community, but within city government itself; is  
18 that right, sir?

19 A I don't -- yeah, I suppose you could term it that  
20 way. Controversial.

21 Q And that there was a great deal of interest on the  
22 part of members of this body in settling the case?

23 A Yes --

24 Q All of those were reasons that you recognized that it  
25 was important for you to be there and attend --

1 discussion; is that correct?

2 A Sure. Well, she asked me to come, and when she asked  
3 me to come, I came.

4 Q Fair enough. And once you got there, what happened  
5 at that point?

6 A She -- when I arrived, she sort of briefed me as to  
7 the situation, pretty much reiterating what she had  
8 said on the phone; that there had been an offer to  
9 settle all three matters, and that there was a belief  
10 that Mr. Stefani had the SkyTel messages.

11 Q Did you ask to see the messages?

12 A No. Well, excuse me, he had -- not that he had them,  
13 but that he had -- might have had access to them.

14 Q Did she tell you that there was a brief that he had  
15 written in which excerpts of those messages or  
16 excerpts from what he claimed were those messages  
17 were quoted in the brief?

18 A No.

19 Q Did you ever learn of the existence of this brief?

20 A Yes.

21 Q From whom?

22 A Mr. McCargo.

23 Q That day?

24 A Yes.

25 Q Did Mr. McCargo tell you what the messages stated or

1 contained --

2 A No.

3 Q Did he indicate to you that these messages, in any  
4 way, suggested that either the Mayor or his former  
5 chief of staff had provided false testimony under  
6 oath during the circuit court trial?

7 A No.

8 Q Did he ever say to you that there might be --  
9 withdraw it. Did he ever indicate to you that the  
10 messages that were quoted, the alleged messages that  
11 were quoted by Mr. Stefani, suggested the existence  
12 of either a sexual or a romantic relationship between  
13 Beatty and the Mayor or both?

14 A No.

15 Q Did you inquire?

16 A No. He basically indicated to me that the motion had  
17 excerpts of text messages, which were embarrassing to  
18 the Mayor, but we knew that already; at least I had  
19 been advised of that already prior to the trial.

20 Q What is it -- what had you been advised prior to the  
21 trial with regard to the embarrassing nature of these  
22 messages?

23 A Well, by my former deputy corporation counsel, Brenda  
24 Braceful, who I had had a few discussions with about  
25 this matter, indicated that the SkyTel messages had

1           been subpoenaed and that the argument in the brief --  
2           a motion had been filed indicated that there was  
3           deliberative process issues in those messages, or  
4           could have been, and that there may have been in --  
5           parts of the text messages that could prove to be  
6           politically embarrassing.

7       Q     Now, this is what Ms. Braceful told you?

8       A     Correct.

9       Q     As far as you know, and I -- I assume this to be  
10          correct, or else we would have subpoenaed her as  
11          well, she had never seen these messages herself; am I  
12          right about that?

13      A     That's correct.

14      Q     She was just sup -- presuming or assuming what might  
15          be in them; is that correct?

16      A     Yes.

17      Q     And you -- withdraw that. Before you had assumed the  
18          role of corporation counsel, your predecessor, as  
19          well as Ms. Colbert-Osamuede and perhaps Ms.  
20          Braceful, had submitted motions and briefs for  
21          protective orders with regard to this par --  
22          particular material that asserted that the content of  
23          the text messages involved deliberative process; is  
24          that right?

25      A     That's my understanding, yes.

1 Q Mr. McCargo told you that the content of the messages  
2 might be embarrassing. Did he provide any more  
3 details to you, and I'm now talking about on October  
4 the 17th?

5 A No.

6 Q Did you ask him for any more details?

7 A No.

8 Q Did he indicate to you that he did not want to say  
9 anymore to you, unless you insisted on it, or  
10 anything like that?

11 A No.

12 Q Weren't you curious about what was in them that made  
13 them embarrassing?

14 A No. The information I received earlier, again  
15 through the deputy corporation counsel; I may have  
16 even talked to Ms. Colbert-Osamuede about it, gave me  
17 a pretty clear indication of what -- what we thought  
18 may have been in there.

19 Q Yeah. So that information was based upon statements  
20 from people who had never seen the text messages or  
21 any version of them; is that right, sir?

22 A That's correct.

23 Q Now, we're talking to Mr. McCargo who had seen text  
24 which at least purportedly was excerpted directly  
25 from those messages; you understood that, is that

1 right?

2 A That's correct.

3 Q Weren't you curious as to whether or not, in fact,  
4 the text that he had seen quoted was deliberative  
5 process, or -- or it was something completely  
6 different?

7 A No.

8 Q Okay. Did you, yourself, engage on the 17th, while  
9 at the Charfoos and Christensen offices, in any  
10 negotiations regarding the settlement of Brown,  
11 Nelthrope, and Harris?

12 A Yes.

13 Q Can you describe the process a little bit for the  
14 members of Council?

15 A Following the decision to attempt to settle it, there  
16 was the negotiation of a payout amount, and the  
17 facilitator, Judge Washington, began to bring figures  
18 back and forth between the parties.

19 Q Do you remember the order in which these cases --  
20 these three cases were settled, if there was order to  
21 it?

22 A Not specifically. I do know that -- I recall the  
23 first offer from Mr. Stefani was to settle three  
24 matters; the Brown case, the Harris case, and then a  
25 water board case --

1 Q Rufus Fluker (ph).

2 A I believe that's the name. And I remember rejecting

3 that out of hand, because the Fluker case, I didn't

4 see where that was at all relevant.

5 Q Well, Mr. Fluker's had his case discussed at length,

6 and it's probably still -- he needs an attorney, I

7 suppose, to represent -- but at any rate, eventually

8 the Harris case was mentioned; is that right?

9 A Yes.

10 Q And -- and you were perfectly open to including that

11 in the global settlement; is that correct?

12 A Right. And this was all in consultation again with

13 Ms. Colbert-Osamuede and Mr. McCargo. They were more

14 familiar with the matters than I was.

15 Q And when the -- was the -- withdraw that. Mr.

16 Stefani has testified that Harris was settled

17 immediately once -- once it was raised. Do you

18 recall that being the case?

19 A Yes, I do. Well, I recall him saying that. I don't

20 recall the sequence of -- of the -- the actual

21 sequence of events, but I know that was resolved

22 quickly.

23 Q Do you remember his demanding \$400,000.00, and your

24 accepting \$400,000.00?

25 A Yes.

1 Q Which is an unusual negotiation, you'll agree?

2 A Right. But again it was on the recommendation of Ms.

3 Colbert-Osamuede. She was familiar with the case,

4 familiar with -- with what had been apparently

5 offered before. It was her recommendation, so I

6 accepted that.

7 Q Once that case was settled, you then went on to Brown

8 and Nelthrope, right?

9 A Yes.

10 Q And eventually, a number was worked out for those two

11 cases; is that right?

12 A That's correct.

13 Q A global number that included the paying out the

14 verdict, paying off some of the interest and some of

15 the attorney's fees, or some combination of all

16 three; am I right?

17 A Right. I don't think it was that specific in terms

18 of who would get what. It was just the amount that

19 we agreed upon eventually.

20 Q The total amount for both cases being \$8,000,000.00?

21 A That's correct. Both plaintiffs being \$8,000,000.00.

22 Q For two -- two plaintiffs, Brown and Nelthrope?

23 A Correct.

24 Q Was there any discussion at the Charfoos office about

25 confidentiality provisions?

1 A No.

2 Q When did you first learn about the existence of  
3 confidentiality provisions in this agreement?

4 A That was on January 31st, 2008.

5 Q I want you to turn to tab three; do you have that  
6 before you?

7 A Yes.

8 Q Have you seen this document before?

9 A Yes.

10 Q When was the first time you've seen this document?

11 A On January 31st, 2008.

12 Q You asked -- withdraw that. You understand that this  
13 matter, the settlement of these three cases, was  
14 brought in front of a committee of this body on  
15 October the 18th, 2007; is that right, sir?

16 A Yes.

17 Q Did you make a telephone call to Council Member  
18 Kenyatta, asking for the matter to be brought before  
19 this committee?

20 A Yes.

21 Q Did you do it that night, the night of the 17th?

22 A Yes.

23 Q Did you ask that it be brought in front of this  
24 committee for hearing the next day?

25 A I believe I did, because I knew that the committee

1 met on Thursday, so I probably did make that request.  
2 Q And when did he ask you to have it there; do you  
3 recall that?  
4 A I believe by 9:00 o'clock the next morning he wanted  
5 a memo.  
6 Q And you instructed Ms. Colbert-Osamuede to that  
7 effect; is that right?  
8 A Right. She was standing next to me. I asked her  
9 could she do that by nine; I believe she responded  
10 no, not that soon. Think -- I think she promised  
11 ten.  
12 Q Did you review the memo before it was taken over to  
13 Council?  
14 A Yes.  
15 Q When you reviewed the memo, did you also take a look  
16 at the settlement agreement that had been signed the  
17 night before?  
18 A I never saw this until January 31st, 2008.  
19 Q Did you ever ask to see it?  
20 A Didn't know it existed.  
21 Q Was -- were you ever informed that there was a --  
22 COUNCIL PRESIDENT COCKREL: Excuse me,  
23 Mr. Goodman. We have a question of clarity from  
24 Council Member Kenyatta.  
25 COUNCIL MEMBER KENYATTA: Yeah, just

1 clarity. I know you asked Mr. Johnson about the  
2 Confidentiality Agreement under tab nine. You were  
3 just asking him about the settlement agreement of  
4 October the 17th. Is he saying that he had not seen  
5 that before? I need some clarity.

6 MR. GOODMAN: I -- he was, but I'll  
7 make it -- I'll ask again.

8 BY MR. GOODMAN:

9 Q We -- we pulled out tab three here, which is the  
10 settlement agreement dated October 17th.

11 A Yes.

12 Q You never saw that until --

13 A January 31st, 2008.

14 Q Right.

15 A Right.

16 Q Nor had you ever asked to see it; is that right?

17 A Didn't know it existed.

18 Q Once you did see this in January 2008, you knew that  
19 there were provisions dealing with the Kilpatrick,  
20 Beatty, SkyTel messages; is that right, sir?

21 A Yes. I read it when -- after it was brought back  
22 from the Stefani deposition.

23 Q And you knew as well that there were provisions  
24 regarding confidentiality of those messages; is that  
25 right, sir?

1 A That's correct.

2 Q And you knew that there were provisions regarding  
3 liquidated damages, that if somebody leaked or  
4 disclosed the existence of that information, they  
5 would forfeit large amounts of money; is that right,  
6 sir?

7 A Yes.

8 Q Did you know of the existence of those provisions  
9 before January 31st, 2008?

10 A No.

11 Q Now, this was a -- we've agreed, a high profile case  
12 in this community; is that right, sir?

13 A That's correct.

14 Q It had been closely covered by the media; is that  
15 correct?

16 A That's correct.

17 Q The existence of these text messages was something  
18 that was of great interest, if not to the public,  
19 certainly to the media; is that right?

20 A Yes.

21 Q And perhaps the public as well?

22 A Yes.

23 Q Had you known of the existence of this  
24 confidentiality -- these confidentiality provisions,  
25 would you have notified members of this body of those

1 -- that those provisions existed; that there was a  
2 Confidentiality Agreement?

3 A I would have consulted with Ms. Colbert-Osamuede to  
4 determine what we should do.

5 Q You would have discussed it?

6 A Yes, oh absolutely.

7 Q It would have been something that at least occurred  
8 to you and you considered doing; is that right?

9 A I would have discussed it with her and determined  
10 what we should do.

11 Q In terms of disclosure to this body?

12 A Right.

13 Q Correct, sir?

14 A Yes.

15 Q And one possibility would have been going into closed  
16 session; is that right?

17 A That's a possibility, yes.

18 Q You worked with this body over a two-year period, and  
19 you know there are times when it's appropriate to --  
20 to call for a closed session?

21 A Absolutely.

22 Q And in your particular role, you know one of those  
23 times is when you and a member of your staff, as the  
24 attorney for the City of Detroit, want to discuss the  
25 strategy or details of the litigation or the

1 settlement of litigation; isn't that right, sir?

2 A That's right.

3 Q And you also know that what is said in closed session  
4 is confidential and cannot be disclosed by anybody  
5 who is in closed session, unless the minutes are  
6 subsequently unsealed by an order of the court; is  
7 that right, sir?

8 A Yeah -- yes.

9 MR. GOODMAN: Does that answer your  
10 question, Member Kenyatta?

11 COUNCIL MEMBER KENYATTA: Yes.

12 BY MR. GOODMAN:

13 Q Were you aware that on October the 19th, 2007, the  
14 Detroit Free Press submitted a Freedom of Information  
15 Act request concerning the settlement of -- of Brown,  
16 Nelthrope, and Harris?

17 A Not on October 19th.

18 Q When were you aware of that?

19 A I looked back and saw that Ms. Ellen Ha sent me an e-  
20 mail October 23rd, as she does with every media  
21 request, I should add.

22 Q Did she send you a copy of the request?

23 A Yes.

24 Q And that request --

25 MR. GOODMAN: And that would be under

1 tab thirteen, members of Council and Mr. Johnson.

2 BY MR. GOODMAN:

3 Q Calls for the production of quote, "the entire  
4 settlement agreements in the separate Wayne County  
5 Circuit Court lawsuits mentioned above," which are  
6 the Brown, Nelthrope, and Harris cases; is that  
7 right, sir?

8 A That's right.

9 Q Did you confer at that point with -- with Ms.  
10 Colbert-Osamuede to determine what was meant by the  
11 entire settlement agreements?

12 A No, I did not.

13 Q Did you ask her for the entire settlement agreements,  
14 or in fact for any of the settlement agreements in  
15 either case?

16 A No, that's not my job. Ellen Ha is the FOIA  
17 coordinator. She responds to all requests.

18 Q Were you interested in that point in reviewing those  
19 agreements so as to understand what the newspapers  
20 might be interested in, or whether there might be  
21 disclosures, if these things were disclosed to the  
22 newspapers, that would be surprising to the public?

23 A No. Ms. Ha, when she receives requests, she goes  
24 about her business of gathering whatever documents is  
25 made in the request, and she gets them, she sends

1           them out. I very rarely review any of her work, as I  
2           do -- as I very rarely review a lot of the  
3           supervisors work. I'm not a micromanager, so when  
4           the attorneys receive information, they -- or  
5           requests, they do their job. I expect them to do it.  
6           In this instance, she I would assume to respond to  
7           this as she does with all FOIA requests.

8       Q     You're aware of the fact a Freedom of Information  
9           lawsuit has been filed, and there's currently ongoing  
10          litigation in front of Judge Colombo?

11    A     Yes.

12    Q     Are you aware that Judge Colombo has stated that, and  
13          I quote, "It is clear that but for the settlement of  
14          the Brown and Nelthrope case and the Harris case,  
15          exhibit thirteen" --

16                               MR. GOODMAN: Which our tab nine,  
17          members of Council, and Mr. Johnson --

18   BY MR. GOODMAN:

19    Q     "Exhibit thirteen, the Confidentiality Agreement --  
20          would never exist. Exhibit thirteen would never have  
21          been negotiated if there had been no settlement of  
22          those lawsuits. Exhibit thirteen was a part of that  
23          -- of the settlement" end quote.

24    A     I'm aware of his ruling.

25    Q     And you're aware of that -- his statement in that

1           regard; is that correct?

2       A       Yes.

3       Q       Do you agree with it?

4       A       This is one of the areas where I'm going to decline  
5               comment, because of the pending litigation, and the  
6               fact that this body is an adverse party in that  
7               litigation.

8       Q       That statement was made yesterday, that this party is  
9               an adverse -- this -- this body is an adverse party.

10      A       That's correct.

11      Q       Whether we are adverse on some issues and -- on  
12               others remains to be seen, or whether this body and -  
13               - and your client is adverse to one another I think  
14               has -- remains to be seen, and I don't want to let  
15               the record go unchallenged on that, but you're  
16               certainly entitled to your own viewpoint --

17                       COUNCIL MEMBER COLLINS:  Mr.  
18               President?

19                       COUNCIL PRESIDENT COCKREL:  Yes.

20                       COUNCIL MEMBER COLLINS:  Is he taking  
21               the Fifth Amendment?

22                       COUNCIL PRESIDENT COCKREL:

23               (Inaudible)

24                       THE WITNESS:  No, ma'am.

25                       MR. GOODMAN:  I don't think so.

1 COUNCIL MEMBER COLLINS: Is it  
2 similar?

3 THE WITNESS: No. The Fifth Amendment  
4 is -- well, I don't want --

5 COUNCIL MEMBER COCKREL: I'm  
6 disappointed --

7 COUNCIL MEMBER COLLINS: He's just  
8 declining to answer.

9 MR. GOODMAN: He's declining to answer  
10 --

11 COUNCIL MEMBER COLLINS: It might  
12 incriminate him (inaudible) answer.

13 MR. GOODMAN: He said that we -- that  
14 you as a body are opposed to the interests of his  
15 client, which is the City of Detroit, in the Freedom  
16 of Information Act case. And I -- we have a  
17 disagreement on that.

18 BY MR. GOODMAN:

19 Q So, let's move on.

20 A Thank you.

21 Q Leaving aside that this was the statement of Judge  
22 Colombo in that case, you agree with -- with -- do  
23 you agree that it is clear that but for the  
24 settlement of the Brown and Nelthrope case and the  
25 Harris case, the document -- the settlement agreement

1 found at tab nine would never exist? That settlement  
2 agreement would never have been negotiated had there  
3 been no settlement of those lawsuits. That  
4 settlement agreement, under tab nine, is a part of  
5 the settlement; that Confidentiality Agreement, I  
6 should say?

7 A Same answer, Mr. Goodman. I'm not responding to  
8 anything involved in that litigation.

9 Q This does not involve the Freedom of Information Act  
10 litigation; this is -- I'm asking your opinion, and  
11 I'll -- I'll just put it in my own words then. Do  
12 you think that if there had been no Confidentiality  
13 Agreement, these cases would have ever been settled?

14 A That's speculative. It really is.

15 Q You --

16 A That's -- that's speculative, and really a  
17 hypothetical. I don't know.

18 Q Well, you --

19 A I mean there's always a possibility that they could  
20 have settled.

21 Q Since you didn't even -- since you had no knowledge  
22 of this Confidentiality Agreement at all, or the  
23 provisions regarding confidentiality, and since  
24 apparently you weren't present when they were  
25 discussed, you have no idea as to whether or not they

1           were essential, the Confidentiality Agreement, was  
2           essential to the settlement of the overall case.

3       A     That's correct.

4       Q     Given the fact that we agree this was an extremely  
5           high profile case, and that there was a great deal of  
6           discussion about it within our community, in your  
7           opinion, should this body have been advised as to the  
8           existence of confidentiality provisions that were a  
9           part of the settlement at the time it was asked to  
10          approve the settlement?

11      A     Not necessarily. As I said, I've been advised by Ms.  
12           Colbert-Osamuede that agreements of --  
13           confidentiality agreements are not unusual in  
14           employment law-related cases, and based on my  
15           discussions with her, they've never been discussed  
16           with the Council, so not necessarily.

17      Q     I heard you say that. My question is -- this case is  
18           not a run of the mill employment case with the City  
19           of Detroit. This is was a highly unusual case; you  
20           would agree with that, is that right?

21      A     Yes.

22      Q     And given the highly unusual nature of this case, my  
23           question is, in your opinion, should those provisions  
24           have been disclosed to this body, because it was so  
25           unusual and unique?

1 A My answer remains the same. Not necessarily. I --  
2 again, I was consulted about that with Ms. Colbert-  
3 Osamuede; it had been brought to my attention and  
4 made a decision based upon consultation with her.

5 Q What factors would you have taken into account in  
6 making that decision?

7 A We would have discussed that during our consultation.  
8 I -- I'm not sure what would come up during that  
9 discussion, but everything she would have advised me  
10 on, I would have taken into consideration.

11 Q Is there a risk management process within the City  
12 Law Department with regard to -- well, is there a  
13 risk management process within cases that are handled  
14 by the City Law Department?

15 A No. Risk management process -- what do you mean by  
16 that?

17 Q Let me see if I can define it. We've had some  
18 discussion of it earlier this morning, and let me see  
19 if I can help you with that. Is there a way, a  
20 process whereby cases are identified as being of  
21 great risk to the City of Detroit, financially, in  
22 terms of reputation, in terms of danger, or a number  
23 of possible reasons, and those cases, those handful  
24 of cases that are not run of the mill, pulled out of  
25 the -- out of the litter of all cases and handled

1 differently?

2 A No, not handled differently. But I know that cases  
3 are evaluated for what -- may be the monetary  
4 exposure. I've recently begun to ask for high  
5 profile cases, just so I can know what those are.  
6 But they're not handled any differently. The  
7 attorney, they're very competent and they do their  
8 job very well, so I can't say they're handled  
9 differently. Now, perhaps there may be two attorneys  
10 assigned to it, perhaps as opposed to one, because of  
11 the nature of the case, the complexity of it, but  
12 that's handled again within the division and done by  
13 the chief of that division. They make those  
14 decisions.

15 Q When cases are evaluated, are they evaluated as soon  
16 as they're -- shortly after they're filed with your  
17 office?

18 A Probably not. I would think it probably is done  
19 after some discovery is done.

20 Q At some point is there a -- a cutoff point during --  
21 beyond which an -- or at -- at which an evaluation of  
22 this sort needs to be done within your office?

23 A Cutoff point? I can't say that. I think they're  
24 probably constantly evaluated, based upon the  
25 information that the attorneys are receiving.

1 Q When cases are evaluated as having a potential risk  
2 of being possibly costing the City more than a  
3 certain amount of money; let's say it's \$1,000,000.00  
4 or \$5,000,000.00, whatever it is, is there any kind  
5 of proactive attempt for particularly dangerous  
6 cases, to either settle those cases or resolve them,  
7 or have them disposed of in some manner or another?

8 A I think it's on a case-by-case basis. It depends on,  
9 I think what's yielded during discovery, what the  
10 attorney finds out, and then if something is -- there  
11 would -- it depends on the amount involved, they  
12 would -- might come and discuss that with me,  
13 depending on, again, on the possible exposure.

14 Q So my question then would be is there a way, if you -  
15 - in the future, let us say, you were to bring  
16 settlements before this body for its consent and  
17 approval, you can say to this body, this case has  
18 been screened for possible -- through a risk  
19 management process, it falls below the level of -- of  
20 risk management, or it falls above the level of risk  
21 management, and once that determination has been  
22 made, it's been dealt with either in some special way  
23 or not. That's not done; is that right?

24 A No.

25 Q The same questions I would ask, by the way, with

1           regard to conflicts of interest; is there a conflict  
2           of interest risk management system in your office to  
3           make -- to screen cases for conflicts of interest and  
4           if there is some determination that there's a risk of  
5           such conflict arising, to address it directly?

6       A       Yes. I'm not sure you'd call it a process, but  
7           certainly when cases are received, there's multiple  
8           defendants, as the case proceeds and there's a  
9           determination that there's a conflict, it's brought  
10          to my attention; we discuss and decide what to do.

11       Q       Yes, of course, once a conflict is brought to your  
12           attention, I'm sure that you and your office make  
13           such a decision. My question is, is there any  
14           screening for the potential of such conflicts arising  
15           before they arise?

16       A       I think it's probably considered. I can't tell you  
17           again, because that's done by the staff attorney,  
18           their supervisor, and the chief perhaps probably  
19           involved in that.

20       Q       Are there any forms or written materials or  
21           instructions that lawyers in your office routinely  
22           use to make a determination of how to first of all  
23           determine the existence of a conflict of interest,  
24           and then how to proceed once they've done so?

25       A       Not to my knowledge.

1 Q And the same question going back to the earlier  
2 question with regard to cases that are of particular  
3 danger or risk to the City of Detroit; is -- are  
4 there forms or written procedures or instructions  
5 that your office provides to its attorneys for making  
6 decisions about whether or not any case is  
7 particularly dangerous, and then once that decision  
8 is made, how to proceed from there?

9 A No forms to my knowledge.

10 Q Or written instructions or checklists or anything  
11 like that?

12 A Not to my knowledge.

13 Q Now, you've indicated that based upon your  
14 discussions with Ms. Colbert-Osamuede, you have  
15 concluded or learned that there are a number of cases  
16 in which confidentiality agreements are written --  
17 pardon me -- are written and are a part of the  
18 settlement of cases and that those confidentiality  
19 agreements are routinely never disclosed to this body  
20 in asking for approval of the settlement of the case;  
21 is that right?

22 A That's what she advises me, yes.

23 Q Are -- and this is in the labor and employment area;  
24 is that right?

25 A Yes.

1 Q Now, are there ever such agreements in any other area  
2 of litigation that your office handles?

3 A Not to my knowledge.

4 Q Have you ever determined whether it is good policy  
5 not to disclose the existence of confidentiality  
6 agreements at the time that authority to settle cases  
7 is sought from the Detroit City Council?

8 A That's not been discussed.

9 Q Going back to your written statement, Mr. Johnson,  
10 and it -- I want to refer to point one. You state  
11 although it was our original intention to appeal the  
12 Brown verdict, an investigation into jury misconduct  
13 did not yield the hoped-for results. When did your  
14 office form the intention in fact to settle the Brown  
15 case?

16 A On October 17th, 2007.

17 Q Was that intention formed, that -- of the case should  
18 and needed to be settled -- based upon the  
19 investigation into jury misconduct?

20 A Oh, no.

21 Q It was based, was it not, at least in part, upon the  
22 disclosure of the existence of these SkyTel messages?

23 A The disclosure that Mr. Stefani might have had them,  
24 yes.

25 MR. GOODMAN: Mr. President, I have no

1 more questions at this time. I'm sure if there is  
2 time remaining at the end, I will have a few follow-  
3 up questions.

4 COUNCIL PRESIDENT COCKREL: All right.  
5 Thank you very much, Mr. Goodman. I have a number of  
6 questions, and then following me -- following me will  
7 be Council Member Brenda Jones, Council Member Sheila  
8 Cockrel, then President Pro Tem, then Council Member  
9 Collins.

10 My first question --

11 COUNCIL MEMBER KENYATTA: Mr.  
12 President?

13 COUNCIL PRESIDENT COCKREL: Yes?

14 COUNCIL MEMBER KENYATTA: When you sat  
15 down, I told you to put my name on the list.

16 COUNCIL PRESIDENT COCKREL: Oh, that's  
17 right, and I forgot. You're actually after me. So,  
18 I missed that. Yes, you're right, you are there.

19 So my first question, Mr. Johnson, is  
20 who in your view in this case were your clients?  
21 Enumerate them (inaudible) more than one?

22 THE WITNESS: The City of Detroit and  
23 the Mayor.

24 COUNCIL PRESIDENT COCKREL: Just those  
25 two?

1 THE WITNESS: Yes, that's who is named  
2 in the pleadings.

3 COUNCIL PRESIDENT COCKREL: So -- so  
4 that being the case, is it safe to assume that  
5 because you did not consider City Council as being  
6 one of your clients, that that's why you chose not to  
7 inform us of the motion and the -- and the separate  
8 Confidentiality Agreement, and all the other issues  
9 related to that?

10 THE WITNESS: It was not a choice not  
11 to inform you. It was actually never discussed by --  
12 me and Ms. Colbert-Osamuede. So there's no  
13 deliberate choice made to not inform you.

14 COUNCIL PRESIDENT COCKREL: Can you  
15 elaborate when you say it was not discussed; not  
16 discussed by Ms. Colbert-Osamuede, or --

17 THE WITNESS: And -- and me. There  
18 was no discussion of that at all. As I said, I  
19 didn't know the October 17th writing existed, so  
20 there was no discussion.

21 COUNCIL PRESIDENT COCKREL: But when  
22 you found out that it did indeed exist, and based on  
23 your discussions with Ms. Colbert-Osamuede, it didn't  
24 occur to you that something of this magnitude was  
25 suggesting that maybe perjury on the stand had taken

1 place, and that there were other issues; it didn't  
2 occur to you that something that major and  
3 potentially explosive was something that you needed  
4 to inform this Council about before we voted on a  
5 settlement?

6 THE WITNESS: Let's be clear. I  
7 didn't know about anything in the content of those  
8 messages until I read them on January 24th, 2008.

9 COUNCIL PRESIDENT COCKREL: Well, that  
10 does lead me to my next and last question for now,  
11 but I'm gonna have additional questions. So that --  
12 you know, what you said about not knowing about the  
13 context of those messages is kind of consistent with  
14 what Ms. Colbert-Osamuede said yesterday, and I just  
15 find it very hard to believe that lawyers of your  
16 skill recommended and negotiated a settlement based  
17 on information that none of you ever really took a  
18 thorough look at. It never occurred to you that  
19 maybe that was a bluff, or if it wasn't a bluff, that  
20 if the text messages really were out there, and  
21 Stefani had them, no one every said get these to me  
22 so I can read them in detail?

23 THE WITNESS: I'm not sure if Mr.  
24 McCargo ever said that, but again my discussions and  
25 evaluation of the matter were with Mr. McCargo, Ms.

1 Colbert-Osamuede, and to some degree with Mr.  
2 Copeland; mainly with Mr. McCargo and Ms. -- Ms.  
3 Colbert-Osamuede. And it was based upon information  
4 that we had and we discussed the decision was made.

5 COUNCIL PRESIDENT COCKREL: I will  
6 stop now because I'm at my limit. I will come back  
7 for additional questions. But I find it very hard to  
8 believe.

9 Council Member Kenyatta is next.

10 COUNCIL MEMBER KENYATTA: Thank you,  
11 Mr. Chair. It's almost good evening, Mr. Johnson.

12 THE WITNESS: Good evening.

13 COUNCIL MEMBER KENYATTA: Thank you.  
14 You've been here for the last couple of days, and  
15 thank you. It's been -- it's been a long day, it's  
16 hot in here, and they tell me it's hot outside, so  
17 I'm going to try to be very brief, because it's very  
18 clear to me that based upon what you've said, you're  
19 about as much in the dark as -- as we were, because  
20 none of the statements that -- and as Mr. Edwards  
21 pointed out, there are several agreements that were  
22 signed by Ms. Osamuede, but you never saw them, based  
23 upon your statement, until sometime this year.

24 You indicate in your -- in your  
25 statement that there was no deliberate attempt by any

1 attorney involved in the settlement to hide  
2 information from the Council. How would you know,  
3 because you didn't even know the information existed  
4 yourself?

5 THE WITNESS: That's why I made the  
6 statement.

7 COUNCIL MEMBER KENYATTA: Okay. So  
8 you don't know if there was a deliberate or un-  
9 deliberate attempt to not share, because it wasn't  
10 even shared with you?

11 THE WITNESS: Well, again, in  
12 discussing this with Ms. Colbert-Osamuede, I  
13 delegated authority and responsibility to her for the  
14 matter. So --

15 COUNCIL MEMBER KENYATTA: The buck  
16 does stop with you though --

17 THE WITNESS: Absolutely.

18 COUNCIL MEMBER KENYATTA: Okay.

19 THE WITNESS: No question about it.

20 COUNCIL MEMBER KENYATTA: I'm trying  
21 to see who's in front of that bus. But let me -- let  
22 me just ask this and I'm through.

23 You had also indicated that -- and you  
24 did not have to discuss this with her; you indicated  
25 that -- that the Brown and Harris case was settled by

1 my approval. I gave that approval after consultation  
2 with the defense attorneys and an evaluation of the  
3 situation. It was testified earlier by pretty much  
4 everyone, and in writing, that there was no authority  
5 given to any of the attorneys to expand the scope of  
6 the negotiations whatsoever, and on October the 27th,  
7 the Mayor concurred with that by saying that the  
8 parties were ordered into facilitation for the sole  
9 purpose of negotiating and facilitating a resolution  
10 of any outstanding attorney fees claims of the  
11 plaintiffs' settlement discussion at facilitation  
12 proceeding were based on information and -- and  
13 belief expanded beyond the court's order for  
14 facilitation as a result the defendant, Mayor Kwame  
15 Kilpatrick, hereby rejects any and all terms. So,  
16 I'm -- I'm kind of confused as to where you got the  
17 approval from when the Mayor didn't give it, based on  
18 his statement, the court didn't give it, and I'm sure  
19 Ms. Osamuede didn't give it. Where did you get the  
20 authority to settle the case on the 17th?

21 THE WITNESS: Would you repeat the  
22 question?

23 COUNCIL MEMBER KENYATTA: Oh, you've  
24 got -- where did you get the authority to settle the  
25 case, given all of the other things that I've stated:

1 the fact that the court only gave the parties the  
2 authority to facilitate based on attorney fees.

3 THE WITNESS: Right.

4 COUNCIL MEMBER KENYATTA: Based on the  
5 fact that the Mayor rejected what -- whatever was  
6 settled, because he said that was the only authority,  
7 so therefore he didn't give it. Mr. McCargo said  
8 that he didn't have the authority. But in your  
9 statement here you said I approved the settlement.

10 THE WITNESS: Right. As I recall --

11 COUNCIL MEMBER KENYATTA: Where did  
12 you get the authority --

13 THE WITNESS: As I recall the sequence  
14 of events, that rejection was later, and is it -- I  
15 believe October 27th, is it -- I'm not sure of the  
16 date.

17 MR. GOODMAN: It is tab --

18 COUNCIL MEMBER KENYATTA: Right. It's  
19 -- it's an objection of what was decided on the 17th.

20 THE WITNESS: Right. And again, as I  
21 recall now, way after the fact, having been advised  
22 of the documents, that the October 17th writing had a  
23 number of preconditions -- apparently those  
24 conditions -- and I'm not -- I'm assuming this  
25 because I was not involved in drafting any of these

1 documents, but again recognizing the preconditions  
2 have not been met, I'm assuming that's why there was  
3 a rejection of the --

4 COUNCIL MEMBER KENYATTA: No, no. My  
5 question is not on the rejection. My question is  
6 based on your statement that I gave the approval to  
7 settle the case -- to settle the case. I gave that  
8 approval, and the Brown/Harris case was settled by me  
9 --

10 THE WITNESS: Right.

11 COUNCIL MEMBER KENYATTA: My approval.  
12 I -- my question is directly, who gave you the  
13 authority to settle the case?

14 THE WITNESS: As Corporation Counsel,  
15 I have that authority to settle a matter, a civil  
16 matter. I have the authority to do -- at least to  
17 recommend settlement to this body.

18 COUNCIL MEMBER KENYATTA: So even  
19 though the Mayor felt that he didn't have the  
20 authority, because that was not what you all were led  
21 to do, you felt that the Corporation Counsel had the  
22 authority, even though the court did not direct such?

23 THE WITNESS: I -- I don't see where  
24 he says he didn't have the authority.

25 COUNCIL MEMBER KENYATTA: Where --

1 where are you looking?

2 THE WITNESS: I --

3 MR. GOODMAN: Tab five, Mr. Kenyatta.

4 THE WITNESS: I don't -- I don't see  
5 that in here.

6 COUNCIL MEMBER KENYATTA: Tab five?

7 THE WITNESS: Yes.

8 COUNCIL MEMBER KENYATTA: The Mayor  
9 says that the parties were ordered into facilitation  
10 for the sole purpose of negotiating and facilitating  
11 a resolution for any outstanding attorney fees,  
12 claims of the -- in settlement discussion; you see  
13 that?

14 THE WITNESS: Yes.

15 COUNCIL MEMBER KENYATTA: And it goes  
16 on to say that the discussion went beyond that, and  
17 for that purpose, and for that reason, I reject the  
18 terms of the proposed settlement. So are you saying  
19 that he -- he didn't give the authority, because the  
20 discussion went beyond that?

21 THE WITNESS: No, I'm not saying that.  
22 I don't see where this says he doesn't have the  
23 authority. Certainly he does have the authority to -  
24 -

25 COUNCIL MEMBER KENYATTA: No --

1 THE WITNESS: But -- but as  
2 Corporation Counsel, I do too.

3 COUNCIL MEMBER KENYATTA: Okay. I --  
4 thank you. Thank you.

5 COUNCIL PRESIDENT COCKREL: All right.  
6 Council Member Jones.

7 COUNCIL MEMBER JONES: Thank you.  
8 Good afternoon, Mr. Johnson.

9 THE WITNESS: Good afternoon.

10 COUNCIL MEMBER JONES: Thank you for  
11 being here.

12 Going back to the -- well, first of  
13 all, let me first start out by asking you, as  
14 Corporation Counsel, what is your duties and  
15 responsibilities --

16 THE WITNESS: To direct the Law  
17 Department, and to act as attorney for the City of  
18 Detroit.

19 COUNCIL MEMBER JONES: So again, let  
20 me go back to tab five, where the Notice of Rejection  
21 of Proposed Settlement -- where the Mayor rejected  
22 the settlement that the Council -- do you feel that  
23 the Mayor rejected the settlement, and Council again  
24 had already made that, as Corporation Counsel, the  
25 Law Department should have come back to the Council

1 for a settlement -- because this settlement had been  
2 rejected.

3 THE WITNESS: I didn't see this  
4 document either until January 31st, 2008.

5 COUNCIL MEMBER JONES: So, is it  
6 normal that -- Corporation Counsel -- the buck stops  
7 with you, that in such a high profile case such as  
8 this, your attorneys would not report to you what's  
9 going on and the documents that -- that are involved;  
10 is that a normal situation?

11 THE WITNESS: Well, I want to just --  
12 again, this was a -- a high profile case, certainly.  
13 But let's be clear that I delegate authority and  
14 responsibility to my chiefs and to -- supervise their  
15 respective divisions within the Law Department.

16 Ms. Colbert-Osamuede had 17 years of  
17 municipal law experience in the labor and employment  
18 area, and I -- as I actually mention in my statement,  
19 have full faith and trust in her and what she does.  
20 Not only on this file, but every other file that's  
21 under her jurisdiction. She reports to me and tells  
22 me what she's doing on cases when she feels it's  
23 necessary to do that. We converse about matters, I  
24 give her guidance when necessary, but because of her  
25 experience and because of her competence that she's

1 demonstrated to me, I don't micromanage the work. And  
2 this specific document, I don't recall her testimony  
3 specifically, but I don't think she drafted this. I  
4 think this was done by Mr. McCargo.

5 COUNCIL MEMBER JONES: Do you then  
6 think that it was unusual situation that you were  
7 called over to Charfoos and Charfoos while they were  
8 in the parking lot discussing it and she called you  
9 and asked you to come over there? Is that a normal  
10 situation -- what's going on or -- was that normal or  
11 un-normal?

12 THE WITNESS: It depends on the type  
13 of case. I recall in other cases that are -- involve  
14 a lot of money, I've been asked to come over to sit  
15 in on settlement conferences -- they make a decision,  
16 so that was not the only one in which I've gotten  
17 calls from attorneys asking me to be a part of the  
18 discussion.

19 COUNCIL MEMBER JONES: At what point  
20 did you realize that conflict of interest --

21 THE WITNESS: In regards to what,  
22 Council Member Jones?

23 COUNCIL MEMBER JONES: That  
24 Corporation Counsel represented the City Council, and  
25 --

1 THE WITNESS: I didn't believe a  
2 conflict existed at any point in this matter until  
3 probably after the revelation of the so-called text  
4 messages in January.

5 COUNCIL MEMBER JONES: Can you put me  
6 back on the list? Thank you.

7 COUNCIL PRESIDENT COCKREL: Yes.  
8 Council Member Cockrel is next.

9 COUNCIL MEMBER COCKREL: Thank you.

10 Good afternoon.

11 THE WITNESS: Good afternoon.

12 COUNCIL MEMBER COCKREL: The first  
13 question -- you have -- you are presented by two --  
14 esteemed members of the Michigan Bar, Mr. Evelyn and  
15 Mr. Matteo (ph), and my question -- first question --  
16 who's paying for their appearances here today?

17 THE WITNESS: No one has paid anything  
18 yet. Certainly, there is expectation -- of  
19 compensation of Mr. Evelyn pursuant to the City  
20 ordinance that allows for attorneys to represent  
21 people who have been subpoenaed, which we do  
22 routinely for the Law Department.

23 COUNCIL MEMBER COCKREL: So you -- you  
24 are ultimately going to request payment from the City  
25 of Detroit for --

1 THE WITNESS: Yes. For Mr. Evelyn,  
2 yes.

3 COUNCIL MEMBER COCKREL: That's one  
4 question. Second question; I've been around for a  
5 number of corporation counsels, and I have would have  
6 to say to you -- corporation counsel office is run in  
7 a profoundly (inaudible) is it standard practice that  
8 you are not -- that you don't see the settlement  
9 agreements in multi-million dollar case -- and let's  
10 context this further. In multi-million dollar case  
11 wherein the Mayor of the City of Detroit and his  
12 chief of staff have testified (inaudible) core case  
13 and were -- roundly rejected by a jury as being  
14 believable, and you tell us on the 25th or 3rd of  
15 September, virtually hell would have to freeze over  
16 before you settle this case; we're gonna appeal,  
17 appeal, appeal, and suddenly on October 17th, at  
18 facilitation on other matters, something happens and  
19 your chief -- a woman of high renown in the City Law  
20 Department, comes to you and says I think we ought to  
21 settle this; there's a settlement agreement drawn up  
22 -- tab three, signed on behalf of the City of Detroit  
23 by -- Ms. Osamuede (inaudible) Mr. Copeland's  
24 signature (inaudible) part of the Mayor of Detroit;  
25 is it your testimony you didn't ask to see that?

1 THE WITNESS: I didn't know it  
2 existed, and -- I did not.

3 COUNCIL MEMBER COCKREL: But I mean --  
4 that's very problematic to me.

5 COUNCIL MEMBER COLLINS: Disingenuous.

6 COUNCIL MEMBER COCKREL: Disingenuous  
7 -- it's closer to malpractice.

8 The next question; is it your belief  
9 that a governmental body can enter into  
10 confidentiality agreements, and what is the basis for  
11 your belief? This was the question yesterday that  
12 Ms. Colbert-Osamuede declined to answer pursuant to  
13 her lawyer's recommendation.

14 THE WITNESS: I don't have an opinion,  
15 and I would to -- to quite honestly seek opinion from  
16 someone, as I normally would do when asked a legal  
17 opinion from the people in my office who are experts  
18 on that to render -- give you a -- a decision on  
19 that.

20 COUNCIL MEMBER COCKREL: Next question  
21 --

22 COUNCIL PRESIDENT COCKREL: That --  
23 that was --

24 COUNCIL MEMBER COCKREL: Was that  
25 four?

1 COUNCIL PRESIDENT COCKREL: Yeah.

2 President Pro Tem --

3 COUNCIL MEMBER COCKREL: I thought it  
4 was three, but --

5 COUNCIL PRESIDENT PRO TEM CONYERS: It  
6 was four -- actually five.

7 COUNCIL PRESIDENT COCKREL: I counted  
8 four, but I will put you back on the last. Pro Tem  
9 is next.

10 COUNCIL PRESIDENT PRO TEM CONYERS:  
11 Thank you, Mr. President.

12 Mr. Johnson, you stated that you  
13 talked to -- several of the lawyers here, including I  
14 think Mr. Stefani, I'm not sure (inaudible), but that  
15 you had -- the reason that you guys settled was  
16 because of Council Member Kenyatta, and that he spoke  
17 with you on the telephone, and you explained to him  
18 that you were going to settle the matter, and to have  
19 the documents ready for him first thing in the  
20 morning, and that the documents didn't actually get  
21 to him until somewhere -- until like 2:30 or so in  
22 the afternoon. Would it be fair to say that when you  
23 -- if you come to a meeting late, that that's when  
24 you bring the documents with you, when you first come  
25 to the meetings, or would other Council members have

1           gotten those documents before they actually came to  
2           the meeting?

3                   THE WITNESS:   Okay.   I'm not sure the  
4           sequence of events, but as I recall, I think we were  
5           asked to have it by nine; Ms. Colbert-Osamuede said  
6           she was going to have it by ten.   I think I heard her  
7           testimony, she -- as I recall, I think she may have  
8           gotten it over by eleven.   I think Mr. Kenyatta  
9           indicated that the meeting was almost over when she  
10          arrived, and I think standard practice is that -- I  
11          believe that once a memorandum is submitted to  
12          Council, that would go to everyone, and I think  
13          that's what I heard yesterday; that everyone received  
14          it.

15                   COUNCIL PRESIDENT PRO TEM CONYERS:  
16          That she would have brought some when she came over --  
17          -

18                   THE WITNESS:   Yes.

19                   COUNCIL PRESIDENT PRO TEM CONYERS:   --  
20          because they were hot off the press.

21                   THE WITNESS:   Yes.

22                   COUNCIL PRESIDENT PRO TEM CONYERS:   So  
23          the meeting didn't start until 1:00 o'clock and she  
24          came later in the afternoon, we wouldn't have gotten  
25          them at 11, we would have gotten them in the

1                   afternoon when she came over --

2                   THE WITNESS: I guess --

3                   COUNCIL PRESIDENT PRO TEM CONYERS: --  
4                   would that be correct?

5                   THE WITNESS: -- yes. Sure.

6                   COUNCIL PRESIDENT PRO TEM CONYERS:  
7                   Okay. My next question is -- second question; is it  
8                   customary for lawyers to tell their clients the  
9                   particulars that they're going to put on -- in a  
10                  settlement agreement and ask them their permission  
11                  that these are the things that they will -- can agree  
12                  to or not agreed to it before it's actually put in --  
13                  into writing?

14                  THE WITNESS: Customary? I'm not  
15                  sure. Let me -- and just so the Council knows, I am  
16                  not a litigator. That is not my background. I'm a  
17                  law office manager, and that's one of the reasons why  
18                  I was hired to manage the Law Department.

19                  COUNCIL PRESIDENT PRO TEM CONYERS:  
20                  Okay.

21                  THE WITNESS: So to indicate to you  
22                  that I have an extensive litigation background would  
23                  be disingenuous. I do not.

24                  COUNCIL PRESIDENT PRO TEM CONYERS:  
25                  Okay.

1 THE WITNESS: So, what's customary, I  
2 cannot answer that, because that's not my area of  
3 expertise.

4 COUNCIL PRESIDENT PRO TEM CONYERS:  
5 Okay. My third question -- Mr. -- esteemed lawyer  
6 Mr. Carl Edwards appeared before you -- and my son  
7 has the same name, he's a good friend of my husband  
8 as well, he laid out some scenarios where -- how we  
9 could sue the lawyers involved, we could sue the  
10 mayor involved, to get out -- repay the money back to  
11 the City of Detroit. Would it also be fair for you  
12 to say that the members of this body could be sued  
13 also by the residents of the city of Detroit?

14 THE WITNESS: Well, I think that if a  
15 lawsuit is brought against the City of Detroit, it  
16 would include this honorable body.

17 COUNCIL PRESIDENT PRO TEM CONYERS:  
18 Okay.

19 THE WITNESS: So I think that's a  
20 possibility.

21 COUNCIL PRESIDENT PRO TEM CONYERS:  
22 And my last question for you is did you perceive a  
23 conflict or were all the parties aligned trying to  
24 win the case and preserve the resources of the City?

25 THE WITNESS: Yes, that was one of the

1 factors contributing to the settlement. The fact  
2 that members of this Council had indicated a  
3 reluctance or -- a lot of them indicated they wanted  
4 to settle; reluctance to fund any further outside  
5 counsel on the matter -- the fact that we were saving  
6 maybe a million three in the Harris case at least,  
7 given the judgments that had been rendered in the  
8 Brown, Nelthrope matter, and the fact that on October  
9 17th, we were, based on the judgment and interest,  
10 owed the plaintiffs \$7.9 million dollars, not  
11 including attorney fees and costs, which I think  
12 would have brought that to about \$9,000,000.00. So,  
13 all of that worked to convince us that there was a  
14 need to settle and that was the best interests of the  
15 City.

16 Certainly, again, the revelation that  
17 Mr. Stefani may have had the text messages was also a  
18 moving factor in that, because it was felt that if,  
19 based upon the information that we were told were in  
20 there, could have had far-reaching political effect  
21 on the City and relationships, so because of all of  
22 those factors, there was a decision there was a need  
23 to try to resolve the matters.

24 COUNCIL PRESIDENT PRO TEM CONYERS:

25 Thank you. That was my fourth question. If you

1 could put me back on the list, please?

2 COUNCIL PRESIDENT COCKREL: All right.

3 Council Member Collins is next.

4 COUNCIL MEMBER COLLINS: Thank you,  
5 Mr. President.

6 Mr. Johnson, did you have any  
7 conversation with Mayor Kilpatrick about the  
8 settlement amounts or the confidentiality here or  
9 anything --

10 THE WITNESS: That would be  
11 privileged, Ms. Collins.

12 COUNCIL MEMBER COLLINS: Privileged to  
13 who?

14 THE WITNESS: It is attorney/client  
15 privilege.

16 COUNCIL MEMBER COLLINS: Mr. Johnson,  
17 do you feel that because you have no experience as a  
18 litigator that that absolves you of any  
19 responsibility to supervise the Law Department or at  
20 least look at the cases that involve somebody as  
21 prominent as the Mayor or peruse the cases or is it  
22 see no evil, hear no evil --

23 THE WITNESS: Absolutely not.

24 COUNCIL MEMBER COLLINS: -- speak no  
25 evil?

1 THE WITNESS: No, no, no, absolutely  
2 not.

3 COUNCIL MEMBER COLLINS: I -- I find  
4 it difficult to understand the fact that you said you  
5 don't track the cases, even though they're high  
6 profile, and that you aren't curious?

7 THE WITNESS: And that what, ma'am?

8 COUNCIL MEMBER COLLINS: That you were  
9 not curious -- President asked you earlier weren't  
10 you curious, and you said no.

11 THE WITNESS: I think the question was  
12 curious as to what was in the motion; that was the  
13 question.

14 COUNCIL MEMBER COLLINS: Well, I'm  
15 saying curious about following the -- the case  
16 period.

17 THE WITNESS: Yeah, I followed the  
18 case, and there were discussions between me and Ms.  
19 Colbert-Osamuede about the matter, as there are in a  
20 number of cases in the Law Department. So no, that  
21 does not -- and I didn't say I had no litigation  
22 experience; I -- I don't have a lot of -- but prior  
23 to Ms. Braceful's departure, we had a relationship  
24 where she was, in fact, a very fine litigator --  
25 well, is a fine litigator, and the division of duties

1           were such that the chiefs -- the people involved in  
2           litigation reported directly to her, and she  
3           supervised and managed the litigation in the office.  
4           That was her responsibility.

5                       COUNCIL MEMBER COLLINS:  She didn't  
6           report to you --

7                       THE WITNESS:  Yes, she did.

8                       COUNCIL MEMBER COLLINS:  --  
9           (inaudible)?

10                      THE WITNESS:  Yes, she did.  And we  
11           would talk about matters.  My job -- as I said, I was  
12           hired because of my skills as a manager; my job was  
13           more of a policy -- of the office --

14                      COUNCIL MEMBER COLLINS:  (Inaudible)

15                      THE WITNESS:  (Inaudible) but managing  
16           the -- the personnel within the department, the  
17           administrative aspect of it -- the budget, and in  
18           looking at what we could do to improve management  
19           within the office.  For instance, of the goals that  
20           I've had coming in, and still am working on it, is  
21           improving our case management system, in terms of our  
22           -- how we report matters in, how we keep track of  
23           dockets, things of that nature.  Those -- majority --  
24           where my experience lies.  So the relationship was  
25           such that Ms. Braceful actively managed the

1 litigation, and she did report to me, and my job  
2 again was more -- a more broader view, was more  
3 policy warranted. When she left in August -- early  
4 August, and certainly now I've taken on more of that  
5 responsibility because I have to. I have no deputy  
6 now. So I've had to become more engaged in the  
7 litigation since she left than I ever was before.  
8 But before I left that up to her to manage those  
9 cases. That's why I think of her -- Ms. Colbert-  
10 Osamuede yesterday testified that her direct report  
11 was Ms. Braceful, and that's who she consulted with  
12 on this matter.

13 COUNCIL MEMBER COLLINS: As  
14 Corporation Counsel, and therefore our lawyer, the  
15 City Council, where -- what do you suggest we --  
16 where do you suggest we go from here? What should we  
17 do, just forget about it, or should we ask the Mayor  
18 to reimburse the City for the money, or should we  
19 tell the judge we're disgruntled and -- and we want  
20 (inaudible) not impossible to ask to rescind the  
21 settlement or -- or to revisit it. What do you  
22 suggest we do now?

23 THE WITNESS: Well, in regard to this  
24 specific matter, I think we should keep in mind that  
25 there was, in fact, a judgment rendered of \$6.5

1 million dollars in regards to the text messages, and  
2 that judgment was entered by the court, and with  
3 interest -- total of \$7.9 million. That's a fact.  
4 So -- and that's what the matter was settled for. It  
5 wasn't settled for more; it was settled for the  
6 actual -- the amount of the judgment. So as a result  
7 --

8 COUNCIL MEMBER COLLINS: (Inaudible)

9 THE WITNESS: Go ahead, I'm sorry.

10 COUNCIL MEMBER COLLINS: (Inaudible)

11 don't settle for the high amount of the judgment; the  
12 -- the settlement is -- is (inaudible) after the text  
13 messages, the -- Mr. Stefani's fees went from  
14 \$400,000.00 to what, \$2,000,000.00 something?

15 THE WITNESS: I'm not sure that's  
16 accurate. At -- I -- my understanding was at the  
17 time of facilitation his fees were at \$100,000.00;  
18 that was my understanding.

19 COUNCIL MEMBER COLLINS: So --

20 THE WITNESS: Excuse me,  
21 \$1,000,000.00; I'm sorry, \$1,000,000.00 -- I'm sorry,  
22 \$1,000,000.00, that was my understanding.

23 COUNCIL MEMBER COLLINS: Well, my  
24 question remains what do you -- what do you recommend  
25 we do now --

1  
2  
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4  
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THE WITNESS: Well --

COUNCIL MEMBER COLLINS: -- as a body?

THE WITNESS: I certainly think that -  
- and again, this is -- of the hundreds of cases that  
have been brought before his Council, this is -- in  
light of what has happened here, more of an  
aberration than -- than the norm. But given the  
concern of this body, and given (inaudible) what is a  
heightened level of -- of a need for more information  
on settlement matters, I think it's appropriate that  
there be discussion between the Law Department and  
this body on protocol in the future.

COUNCIL MEMBER COLLINS: No; Mr.  
Johnson, my question was where should this body go  
now in this matter?

THE WITNESS: Uh --

COUNCIL MEMBER COLLINS: What's your  
recommendation -- not the future, in this matter.

THE WITNESS: In this particular  
matter?

COUNCIL MEMBER COLLINS: That's why  
we're here, sir.

THE WITNESS: Well, my recommendation  
would be to -- once you've gotten the facts on this  
to -- I'm sure Mr. Goodman will issue his report, but

1 if you're looking to me to say that there should be  
2 some repayment by someone, I'm not going to give that  
3 opinion.

4 COUNCIL MEMBER COLLINS: Well, I'm  
5 asking you what your opinion is; where should we go  
6 from here?

7 THE WITNESS: Well --

8 COUNCIL MEMBER COLLINS: You've got to  
9 make some solid statements sometime today.

10 THE WITNESS: I have made several  
11 solid statements. But that -- and one of them --

12 COUNCIL MEMBER COLLINS: -- where  
13 should we go from here on this matter?

14 THE WITNESS: I don't think that there  
15 should be any repayment by anyone of anything. I  
16 don't think that's even legally possible. We've not  
17 looking into the aspects of the Confidentiality  
18 Agreement that was entered into by --

19 COUNCIL MEMBER COLLINS: (Inaudible)

20 THE WITNESS: -- (inaudible) --

21 COUNCIL MEMBER COLLINS: -- suing  
22 somebody --

23 THE WITNESS: Pardon me?

24 COUNCIL MEMBER COLLINS: Shouldn't we  
25 be suing somebody or making a complaint somewhere --

1 I mean what should we be doing; just nothing --

2 THE WITNESS: Well, I think that  
3 there's been discussion within the Law Department  
4 about whether or not we -- the City has an action  
5 against the parties that signed this agreement to  
6 have the money returned, but unfortunately, a lot of  
7 this information has come out because of court  
8 orders, not because of their own volition. So I'm  
9 not sure that would be viable.

10 COUNCIL MEMBER COLLINS: So, what did  
11 you tell me to do?

12 THE WITNESS: I think that the most  
13 prudent course of action, as I said, would be to --  
14 to look at future protocol as a result of what  
15 happened here --

16 COUNCIL MEMBER COLLINS: Just forget  
17 about this one.

18 THE WITNESS: Well, again, I don't see  
19 where there would be any -- any -- any avenue in  
20 order to be able to demand payment at this point from  
21 anyone, so I would not recommend that.

22 COUNCIL MEMBER COLLINS: You don't  
23 recommend any action by --

24 COUNCIL PRESIDENT COCKREL: That was -  
25 - that was four questions.

1 COUNCIL MEMBER COLLINS: They're --  
2 they're all the same question.

3 COUNCIL PRESIDENT COCKREL: Well, I  
4 know the second question I think you had to ask four  
5 times, because you were trying to get a straight  
6 answer, but I was keeping -- it was four.

7 COUNCIL MEMBER COLLINS: Okay.

8 COUNCIL PRESIDENT COCKREL: Put you  
9 back on the list.

10 COUNCIL MEMBER COLLINS: (Inaudible)

11 THE WITNESS: I've indicated that I  
12 think that you should discuss what you should do in  
13 the future to address your concerns in terms of being  
14 informed and making informed decisions.

15 COUNCIL MEMBER COLLINS: Thank you,  
16 Mr. President.

17 COUNCIL PRESIDENT COCKREL: Council  
18 Member Reeves is next.

19 COUNCIL MEMBER REEVES: Thank you, Mr.  
20 President. Thank you, Mr. Johnson -- being here  
21 today.

22 Because you're a manager of the -- or  
23 you regulate the activities of the counselors that  
24 you are the head of, is it a normal practice to send  
25 them to facilitations without your presence?

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THE WITNESS: Oh, yes.

COUNCIL MEMBER REEVES: That's normal?

THE WITNESS: Yeah. They happen --  
facilitations occur regularly. We have hundreds of  
cases, and facilitations occur probably every day.

COUNCIL MEMBER REEVES: Is it a normal  
practice for a facilitator (inaudible) Mr. Washington  
to call Mr. McCargo out in the -- a parking lot alone  
to discuss motions; is that the normal practice or is  
that malpractice?

THE WITNESS: I think normal  
facilitations are probably held in -- in offices, and  
there is a -- probably the same procedure is  
followed, where the facilitator takes demands from  
each party back and forth, and what's normal is  
probably that. Is this an abnormal situation?  
Perhaps.

COUNCIL MEMBER REEVES: Ms. Osamuede  
was there present, so she could have very well been  
called out there -- Mr. McCargo -- should they be  
together if they're working on (inaudible)?

THE WITNESS: Well, it's my  
understanding from the testimony that Mr. Stefani  
asked the -- that the information he had be given to  
Mr. McCargo only, so I believe that's why he was

1 pulled out.

2 COUNCIL MEMBER REEVES: And -- and did  
3 -- do you think it's a practice (inaudible)  
4 prosecuting attorney his ability or right -- is it  
5 his right to withhold evidence (inaudible) text  
6 messages that had been ordered by Colombo to have  
7 them delivered to him however he received them and  
8 read things on them related things as opposed to  
9 actually showing the actual text messages you -- you  
10 stated earlier that you had read some of the text  
11 messages in what form was it printed, you watched the  
12 -- listened to the disk; how did you become aware or  
13 read the text messages?

14 THE WITNESS: Well, again only in the  
15 papers when they were printed in January.

16 COUNCIL MEMBER REEVES: Printed by Mr.  
17 Stefani?

18 THE WITNESS: Well, printed by the  
19 Free Press. But in relation to I think your first  
20 question in terms of how Mr. Stefani obtained the  
21 text messages, from what I've understood and read, it  
22 seems that he violated a court order in obtaining  
23 them, and then did not provide notice to defense  
24 counsel as is required by the court rules when he did  
25 ask for them. As a result it was somewhat of -- of

1 an ambush, so to speak. At the -- at facilitation,  
2 he did allege that he had them. But again, my  
3 knowledge of the text messages, I read them like --  
4 as everyone else did when -- when they were published  
5 in the -- the daily newspaper.

6 COUNCIL MEMBER REEVES: Thank you.  
7 Thank you, Mr. President.

8 COUNCIL PRESIDENT COCKREL: My list  
9 has temporarily gotten buried. Now I've got it.  
10 Council Member Watson is next.

11 COUNCIL MEMBER WATSON: Thank you very  
12 much, Mr. President. Good afternoon --

13 THE WITNESS: Good afternoon.

14 COUNCIL MEMBER WATSON: -- Attorney  
15 Johnson, Attorney Evelyn --

16 MR. EVELYN: Good afternoon.

17 COUNCIL MEMBER WATSON: I want to say  
18 since a record is being made (inaudible) Attorney  
19 Goodman, over and over again, allegedly Council  
20 members have been calling for a settlement, and  
21 calling not to appeal. I and one Council member  
22 never called (inaudible) there was another urban  
23 legend floating around that one of the jurors  
24 (inaudible) Southfield and that she just never  
25 (inaudible) her voting card, and when it came my way,

1 I did (inaudible) supposed to do with that  
2 information -- fiduciary -- I passed it along. So --  
3 so (inaudible) and I just want to say that for the  
4 record (inaudible) paid out by the City for this.

5 Let me -- my first question; I was to  
6 ask Attorney Johnson, I note that there is a chief  
7 assistant corporation counsel, assistant corporation  
8 counsel, senior assistant corporation counsel,  
9 supervisor -- assistant corporation counsel, Detroit  
10 corporation counsel, general counsel, and the  
11 corporation counsel, a lot of counsel (inaudible),  
12 but is -- is it not true that there are varying  
13 approval levels in terms of a settlement -- a  
14 financial settlement, and if so, tell me which level  
15 is related to which pot of money? So --

16 THE WITNESS: Yes.

17 COUNCIL MEMBER WATSON: -- if it's  
18 \$200,000,000.00, who -- who would approve that, would  
19 it be the Mayor?

20 THE WITNESS: I would certainly  
21 consult with the Mayor before making that decision,  
22 certainly.

23 In terms of within the Law Department,  
24 when there was a deputy corporation counsel, the  
25 chiefs had authority up to \$250,000.00, the deputy

1 had authority up to \$500,000.00, and then after that,  
2 they need to consult with the corporation counsel.

3 COUNCIL MEMBER WATSON: So, following  
4 that --

5 COUNCIL PRESIDENT COCKREL: Real  
6 quickly, Council Member; just for the purpose of  
7 clarity, could you repeat that last statement?

8 THE WITNESS: In terms of settlement  
9 authority?

10 COUNCIL MEMBER WATSON: Yes.

11 THE WITNESS: The -- the chief  
12 assistant corporation counsels have authority up to  
13 \$250,000.00.

14 COUNCIL MEMBER WATSON: And that's --  
15 Valerie.

16 COUNCIL PRESIDENT PRO TEM CONYERS:  
17 Osamuede?

18 THE WITNESS: Yes. Right.

19 COUNCIL MEMBER WATSON: Okay.

20 THE WITNESS: Valerie Colbert-  
21 Osamuede, \$250. The deputy has authority up to  
22 \$500,000.00, and then anything beyond that you need  
23 to consult with the corporation counsel.

24 COUNCIL MEMBER WATSON: Corporation  
25 counsel?

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THE WITNESS: Yes.

COUNCIL PRESIDENT COCKREL: You've got  
the floor.

COUNCIL MEMBER WATSON: Okay. Which -  
- which means that -- that even if she was a  
signatory -- question two, anything over \$250,000.00  
would have to be approved by you in principle, even  
if you didn't write it or see it?

THE WITNESS: That's correct. And I  
did give that authority when I was at facilitation.

COUNCIL MEMBER WATSON: Okay.  
Question three; do you believe that Attorney Stefani  
engaged in some level of extortion with respect to  
the text messages (inaudible)?

THE WITNESS: My attorney is advising  
me of all the investigations that are going on here.  
I certainly -- I think I termed it to be an ambush  
earlier. Certainly that. Whether it rises to the  
level of extortion I think will be decided by the  
prosecutor and/or by the Attorney Grievance  
Commission.

COUNCIL MEMBER WATSON: Okay.  
Question four; you advised the City Council in our  
closed session not to settle the Brown/Nelthrope  
case, and then there was an abrupt turn-around, even

1           though you have now indicated you were not even  
2           witness to the text messages until January of 2008.  
3           Why did you change your mind?

4                       THE WITNESS:   Well, certainly an  
5           impetus -- a motivating factor again was the  
6           revelation by Mr. Stefani that he might have obtained  
7           text messages and I think I mentioned earlier that  
8           information I had received indicated to me that again  
9           due to the nature of text messages, I send them  
10          often; of course, I don't send anything that I  
11          wouldn't want other people seeing necessarily, but  
12          the nature of text messages is such that they're  
13          personal information.   When you send a text message  
14          back and forth to -- from someone, there's a lot of  
15          personal information involved in those text messages  
16          -- it would certainly -- so that's the nature of  
17          them, and that -- anyone who's engaged it that  
18          process knows that.   So one could presume that  
19          there's information that's been preserved that would  
20          be of a personal and private nature, that one would  
21          not want to be publicized.

22                       In addition to that, given that these  
23          were text messages sent out by a high-level  
24          government official, it also can be assumed that they  
25          include privileges that again -- and discussions of

1 government processes that one also would not want to  
2 be published.

3 We know that Ms. Beatty was involved  
4 in labor negotiations, and certainly had high-level  
5 discussions with the Mayor about a myriad of  
6 government -- government functions, so that's  
7 information that, you know, you don't want to get out  
8 into the public domain.

9 So that was certainly a motivating  
10 factor, because if those ever got into the public  
11 domain, and as it has, we knew that it would have  
12 great consequences for the operations of City  
13 government.

14 As I mentioned earlier, according to  
15 Ms. Colbert-Osamuede, and we discussed this after the  
16 Brown verdict, the Harris case was problematic, given  
17 the -- and I sat in on a lot of the Brown case. I  
18 thought we had won it, quite honestly. I listened to  
19 the testimony that had been given, the cross-  
20 examination by Mr. McCargo of Mr. Brown, where he got  
21 Mr. Brown to admit that the memo that he had written  
22 was not even his own memo, that it had been changed  
23 dramatically by Chief Oliver; that he admitted that  
24 the memo was not intended to expose any -- anyone  
25 within the police department -- and I heard all those

1 things, and I felt that the elements of whistleblower  
2 had not been met. Again, not being that familiar  
3 with the whistleblower statute, but just thinking  
4 that -- and then the other examinations of some of  
5 the witnesses, I quite honestly, perhaps naively  
6 thought that we had won that case, and was stunned  
7 quite honestly when the jury took two hours to come  
8 back with a verdict. I'll be very honest with you.

9 Given that, and given the nature, as  
10 we know, of the jury composition -- I think even Mr.  
11 Fieger now in his matters filed a protest (inaudible)  
12 this case, because he says that his jury composition  
13 does not reflect Wayne County in his federal case.  
14 So given that, and given certainly what -- what could  
15 have happened had the Harris case gone to trial, that  
16 was a concern expressed by Ms. Colbert-Osamuede that  
17 we wanted to resolve that matter, because it could  
18 have resulted in a similar verdict for him. In  
19 addition to, as I mentioned earlier, a factor was the  
20 sentiments of this body, and recognizing that there  
21 had been --

22 COUNCIL MEMBER WATSON: Don't say this  
23 body.

24 THE WITNESS: Well --

25 COUNCIL MEMBER WATSON: (Inaudible)

1 THE WITNESS: Right, I'm sorry. The -  
2 - you're right -- correct, excluding Council Member  
3 Watson, that the matter needed to be resolved.  
4 Comments in the paper that they would not be willing  
5 to fund anymore money for outside counsel, that was a  
6 factor certainly in our discussions, and then  
7 certainly the realization that the meter was running  
8 at \$1,000.00 a day on the judgment that was rendered,  
9 that certainly was a consideration, I know made  
10 during the closed session, that it would just -- it  
11 would just go up and up if the -- and if the text  
12 messages had been revealed, regardless of their  
13 content, there was a feeling that the judgment would  
14 only go even higher.

15 So, I think those factors all  
16 contributed to a decision that it needed to be  
17 settled, and was some of the things that we discussed  
18 that day on the 17th, the decision was made to settle  
19 the matter. But again, I'm not going to pretend that  
20 the revelation of text messages was not an important  
21 factor in this.

22 COUNCIL MEMBER WATSON: Thank you, Mr.  
23 President.

24 COUNCIL PRESIDENT COCKREL: Yes.  
25 Council Member Cockrel.

1 COUNCIL MEMBER COCKREL: Thank you.

2 Mr. Johnson, I refer you to page 20 of  
3 the closed session minutes of September the 19th that  
4 have been released per court order. (Inaudible)  
5 settlement authority, because this is frankly getting  
6 curiouser and curiouser. I refer -- refer you to  
7 line five, which would be Ms. McPhail, and she says,  
8 starting at line six, "The Mayor (inaudible)  
9 initiated a process by which (inaudible) significant  
10 get reviewed on the 11th Floor." But you go down to  
11 line 12, "If it's a million dollars or more, it's  
12 being talked about in terms of settlement, that it  
13 comes to me for review and recommendation to the  
14 Mayor." So that's why at this point (inaudible) part  
15 of the discussions. Was this procedure, as explained  
16 to this Council by Ms. McPhail on September 19th,  
17 employed in any way, shape, or form in the October --  
18 the period of October 17th, 18th and on?

19 THE WITNESS: Well -- and that would  
20 be privileged as discussions between attorney and  
21 client. But let's just say that authority was given  
22 at the October 17th facilitation to settle this  
23 matter.

24 COUNCIL MEMBER COCKREL: I guess that  
25 was again another non-answer. But that was question

1 number one. (Inaudible) go to a couple of  
2 hypothetical questions then a fourth specific  
3 question.

4 Hypothetically, if you had known that  
5 the Mayor and Ms. Beatty, in fact had a sexual  
6 relationship, and took adverse action against  
7 employees because the employees had knowledge of the  
8 relationship or were investigating events that would  
9 reveal that relationship, which would subject the  
10 City to liability, could or should you, as  
11 corporation counsel, recommend to the Council that  
12 it, the City Council, (inaudible) to the individuals  
13 (inaudible)?

14 THE WITNESS: -- Council Member  
15 Cockrel, you've asked me a question that is the  
16 subject of a criminal investigation, and to comment  
17 on that I think would be inappropriate.

18 COUNCIL MEMBER COCKREL: Thank you.  
19 Secondly, theoretically speaking, should the City  
20 require employees or officers of the City to pay a  
21 judgment or settlement amount if it shown that  
22 they've act -- acting outside the scope of their  
23 duties or the -- the performance of their duties, the  
24 standard to which we require police officers to  
25 adhere or to get representation by the City?

1 THE WITNESS: I'm sorry, Ms. --  
2 Council Member Cockrel. You know, once again, you're  
3 -- even though -- theoretical, hypothetical, but  
4 you're asking me to comment on matters that are the  
5 subject of investigations, and I think that there  
6 should be due process, that this should play out, and  
7 then once any -- once facts are proven in court, then  
8 a decision can be made, a recommendation can be  
9 offered. But at this point, as I said, this is  
10 purely conjecture, and I really don't want to get  
11 into that, because of what's going on around this  
12 matter right now.

13 COUNCIL MEMBER COCKREL: (Inaudible)  
14 lastly, for this round, you -- just today you've  
15 testified essentially that your staff attorneys and  
16 the whole sort of hierarchy of -- of lawyers make  
17 decisions regarding conflicts, confidentiality, risk  
18 management, settlement agreements, etcetera, and that  
19 you don't micromanage. In light of what you've  
20 described here today, could you succinctly describe  
21 what your duties as corporation counsel actually  
22 entail?

23 THE WITNESS: I didn't say they make  
24 decisions about conflicts, and that they make  
25 decisions about settlement. In some instances they

1 do. They -- they delegate authority and  
2 responsibility. If there's a conflict, and it's  
3 brought to me, and I think I testified to that. And  
4 I have had discussions with attorneys on conflicts,  
5 and we have decided to hire outside counsel when a  
6 conflict exists. And it's happened in -- mainly in  
7 the matter of police conduct -- police misconduct  
8 cases. It's not been brought to my attention in an  
9 employment matter yet, but it has been in police  
10 misconduct cases, where I think we've referred  
11 probably at least three or four matters out because  
12 of a conflict that exists. Actually (inaudible) it -  
13 - a conflict existed in the -- in -- in the Flagg  
14 litigation, and that was the subject of discussion  
15 among -- in terms of that conflict. So, those  
16 matters are brought to my attention.

17 But authority and responsibility is  
18 ded -- delegated to a certain amount to people who do  
19 their job. These are professionals, and I treat them  
20 as such. But at some point, their authority is  
21 limited, and that's when they bring the matter to me  
22 (inaudible).

23 COUNCIL MEMBER COCKREL: Thank you,  
24 Mr. President.

25 COUNCIL PRESIDENT COCKREL: All right.

1 You're welcome. I am next followed by President Pro  
2 Tem, if she returns.

3 COUNCIL MEMBER JONES: Do you have me  
4 on the list?

5 COUNCIL PRESIDENT COCKREL: I don't.  
6 I'll put you on.

7 Mr. Johnson, I'm concerned by what  
8 seems to be a -- a contradiction, and if it's not a  
9 contradiction, then it's even more troubling. In  
10 your testimony you said that the first you learned of  
11 these text messages was when (inaudible) on -- on or  
12 about January 24th -- I don't remember the exact  
13 date.

14 THE WITNESS: That's not -- I didn't  
15 say I learned -- first learned about them; I said  
16 learned about the content as the subject of a  
17 criminal investigation on that day, and so let me  
18 clarify that; I'm sorry.

19 COUNCIL PRESIDENT COCKREL: I -- I  
20 don't believe that's what you said, but --

21 THE WITNESS: Well -- well, if said --  
22 I -- then I apologize; that's --

23 COUNCIL MEMBER COCKREL: When did you  
24 first know about text messages?

25 THE WITNESS: Oh, and I'm -- I said

1           that Ms. Braceful advised me about the text messages  
2           had been subpoenaed early in litigation. That she --  
3           that they had been subpoenaed by Mr. Stefani.

4                       COUNCIL PRESIDENT COCKREL: Okay.

5           I'll just say this. I don't recall you saying that,  
6           and I'll just say this, Mr. Goodman, I think it's  
7           gonna be critical that you consult with the court  
8           reporter at the conclusion of these hearings to make  
9           sure that we get the minutes of every single one of  
10          these hearings as quickly as possible.

11                      THE WITNESS: Then the -- Mr.  
12          President, let me clarify that then, because I  
13          certainly don't want anyone to believe or think that  
14          -- that -- there was discussion between me and Ms.  
15          Braceful about text messages probably in 2006, and  
16          that was when I think the Court of Appeals decision  
17          may have come down, where we first had a discussion  
18          about that.

19                      So, if I've led anyone to believe  
20          otherwise, I'm -- I apologize for that. I thought my  
21          testimony -- and maybe it wasn't, but I thought my  
22          testimony was that I didn't learn about the content  
23          of them, in terms of the actual content, until they  
24          were published in the papers. And if that's not what  
25          I said, then let me make that clear right now, as to

1           what -- as to what my knowledge was on that --

2                   COUNCIL PRESIDENT COCKREL:  I don't  
3           believe --

4                   THE WITNESS:  -- and I -- and I  
5           apologize.

6                   COUNCIL PRESIDENT COCKREL:  I don't  
7           believe it is, but since I'm not 100 percent certain,  
8           I will not even address that question.

9                   But the next question I then have is  
10          that -- you said earlier in your testimony that based  
11          on your discussion with Ms. Colbert-Osamuede, that  
12          not giving Council the -- a separate confidentiality  
13          agreement has been standard operating procedure, as  
14          far as you know, although even though by your  
15          admission, I think you recollected only one case  
16          where that was done.  I guess my question though is  
17          even if that was standard operating procedure to not  
18          give Council a separate or split confidentiality  
19          agreement, given the magnitude of a situation such as  
20          this, given how potentially explosive it was, and  
21          given the risk that sooner or later it could come out  
22          in some shape or form, which it did, you didn't see a  
23          need to break with standard operating procedure and  
24          let City Council know about the existence of these  
25          text messages and the Stefani motion and the other

1 issues associated with that?

2 THE WITNESS: Okay. I think that's a  
3 compound question, but again, the confidentiality  
4 agreement, and I will -- I'm assuming you're  
5 referring to the one that was signed allegedly on  
6 December the 5th; is that the one that you're -- are  
7 you referring to?

8 COUNCIL PRESIDENT COCKREL: I'm  
9 referring to the confidentiality agreement which we  
10 never saw until it was released by the court.

11 Mr. Goodman, do you have a point of  
12 clarification?

13 MR. GOODMAN: I -- I think I can  
14 clarify, yes. I think the question is with reference  
15 to the confidentiality provisions in the -- in the  
16 October 17th agreement, or the separate agreement on  
17 December the 5th, either one, did you feel any  
18 obligation, given the nat -- as -- as the President  
19 has characterized the question?

20 THE WITNESS: Okay. And I think I  
21 have testified the October 17th agreement was not  
22 revealed to me until after the Stefani deposition.  
23 That's when I first became aware of that agreement  
24 and that it had those provisions in it.

25 COUNCIL PRESIDENT COCKREL: And --

1 THE WITNESS: As for the other one,  
2 again, I was not made aware of -- of that until  
3 sometime in January, after the -- this broke, so to  
4 speak.

5 COUNCIL PRESIDENT COCKREL: All right.  
6 My third question, going back to the issue that  
7 Council Member Watson raised about the monetary  
8 amounts of settlement and the dollar amounts and how  
9 those dollar amounts were -- in terms of who has to  
10 give approval; you mentioned, as I recall directly,  
11 that anything over \$500,000.00 really has to go to  
12 you?

13 THE WITNESS: Yes.

14 COUNCIL PRESIDENT COCKREL: So -- so  
15 you did see this then, because you're corporation  
16 counsel, and you said that anything over \$500,000.00,  
17 the corporation could would have to be consulted?

18 THE WITNESS: Right. I didn't see it.  
19 I was called to the facilitation, because it was over  
20 Val -- it was over Ms. Colbert-Osamuede's authority,  
21 so that's why I was called to the facilitation, among  
22 other reasons. I think she felt she wanted me there.  
23 But -- and so that's one of the reasons why; as she  
24 said yesterday, I could have given her that authority  
25 over the phone, and I've done that too in

1 consultation with attorneys, when they've wanted  
2 authority, but she asked me to come there.

3 COUNCIL PRESIDENT COCKREL:

4 (Inaudible) non-responsive -- it's pretty clear how  
5 things are playing out here.

6 Next question is really my last  
7 question. You had mentioned that it was always of  
8 interest to you and to the Law Department to  
9 negotiate a global settlement settling all of these  
10 issues. That's the first I've heard of that, and  
11 it's interesting to note looking at the minutes of  
12 the closed session of September 19th, and I -- I  
13 haven't had a chance to read them again line-for-  
14 line; I don't think there was any mention in there of  
15 a global settlement and an interest in trying to do  
16 one, so --

17 THE WITNESS: I don't think I said  
18 that, Mr. -- Mr. President. I said that there was a  
19 discussion -- I mentioned settlement of the Brown  
20 matter shortly after the verdict to Ms. Colbert-  
21 Osamuede. I didn't discuss settlement of the Harris  
22 matter with her, because that was not on my radar  
23 screen. At least not (inaudible) after the Brown  
24 case. I discussed settlement of that case with her.  
25 I -- the global -- and my statement indicates that

1 the global -- discussion of global settlement was  
2 among Mr. McCargo, Ms. Colbert-Osamuede, and Mr.  
3 Copeland at the facilitation prior to Mr. Stefani  
4 coming -- took Mr. McCargo out in the parking lot.  
5 That's when there was a discussion of a global  
6 settlement. I don't know if they had one prior to  
7 that.

8 COUNCIL PRESIDENT COCKREL: That --  
9 that was my four questions for now. And I -- I'll  
10 just -- and Mr. Johnson, I have always had the -- and  
11 I'm struggling with this, because I have always had  
12 the utmost respect for you, but listening to a lot of  
13 your responses and a lot of your testimony today, it  
14 seems to me to suggest either a lack of truthfulness,  
15 or a lack of competence, and either one is very, very  
16 scary.

17 I'm going to move on now to Council  
18 Member Jones.

19 THE WITNESS: (Inaudible) please --  
20 I'm not -- I don't -- I really don't understand why  
21 you would say that, Mr. President. I've tried to  
22 answer every question -- there's some things I said  
23 that I -- I would invoke privilege on, I understand  
24 that. But I don't understand why you would say that.

25 COUNCIL PRESIDENT COCKREL: I'll just

1 say this because you asked, but I don't want to get  
2 into a debate with you, because there's Council  
3 members that have questions, but much of what you  
4 said suggests that if you are being truthful to us,  
5 you didn't have control of your department.

6 THE WITNESS: Control of my  
7 department?

8 COUNCIL PRESIDENT COCKREL: Yes. And  
9 I'm going to move on. I'm going to -- because  
10 otherwise, we're going to turn it into a debate, and  
11 Council Member Jones is next.

12 THE WITNESS: I reject that -- I  
13 reject that --

14 COUNCIL PRESIDENT COCKREL: You may  
15 feel free to reject it, but it's hard not to look at  
16 your testimony and come to that conclusion.

17 THE WITNESS: Well --

18 COUNCIL PRESIDENT COCKREL: Council  
19 Member Jones is next.

20 THE WITNESS: -- I would have to  
21 address that later. I'd like to address that later.

22 COUNCIL PRESIDENT COCKREL: Council  
23 Member Jones is next.

24 COUNCIL MEMBER JONES: Let me ask you  
25 a question then on the same line of questioning.

1                   You say that your job is to manage the  
2                   Law Department. Would you find it fair to say that  
3                   you couldn't manage this case, because you wasn't  
4                   aware of all the facts, you wasn't even aware of most  
5                   of the documents that we had inside this binder until  
6                   January 24th?

7                   THE WITNESS: I wasn't managing the  
8                   case. Ms. Colbert-Osamuede manages the case. That's  
9                   her job as chief of labor and employment. She  
10                  manages -- and it was her case. She managed the  
11                  case. That's not what I do. I manage the  
12                  department, and Ms. Colbert-Osamuede managed the  
13                  matter. She was assigned to it. She was (inaudible)  
14                  and she had it for four years before I even became  
15                  involved in it, and that was again at the 11th hour.  
16                  So -- and so to expect me to take a file that could  
17                  fill this room and go through every pleading and --  
18                  and determine what has gone on and what to do with  
19                  it, I think is not possible given the other demands  
20                  on my time in my job.

21                  So, Ms. Colbert-Osamuede was the  
22                  manager of this case for -- since 2003, since this --  
23                  since its inception, and did that, I think in a very  
24                  competent manner. I came in and consulted with her  
25                  on the matter. She briefed me as best she could.

1 But there's no way in the world that I was gonna be  
2 able to come in, pick up this case within -- and mind  
3 you that when this case came down from Supreme Court,  
4 Judge Callahan ordered trial within 30 days of the  
5 time it came down from the court -- from Supreme  
6 Court. We had 30 days to come together and plan  
7 trial strategy and actually do the trial.

8 So -- and that -- they're busy doing;  
9 30 days, getting ready for a trial. So -- so to  
10 expect me to come in at the 11th hour and be totally  
11 up to snuff on a matter that was -- as complex as  
12 this, I think is -- is an impossible task for you to  
13 have me undertake, given the demands of my job.

14 COUNCIL MEMBER JONES: I understand  
15 that, and I understand everything you said with all  
16 due respect, Attorney Johnson, but you were the one  
17 that made the decision when she called you --

18 THE WITNESS: Yes.

19 COUNCIL MEMBER JONES: -- that that  
20 amount of money was a sufficient or was a good amount  
21 of money to settle for, and she requested directly to  
22 you, again the buck stops with you --

23 THE WITNESS: Absolutely.

24 COUNCIL MEMBER JONES: -- but you  
25 didn't know anything about these documents, that's

1 half of the reason why we're here today.

2 THE WITNESS: I think Ms. Colbert-  
3 Osamuede testified yesterday that she didn't share  
4 that with me, and I don't think anyone questioned her  
5 about that when she said that. That was her  
6 testimony, that she never shared that with me. And  
7 no one said anything about that yesterday. So -- but  
8 -- but my job when she called me to the meeting again  
9 was to be briefed and to advise me as to where we  
10 were. Certainly, we negotiated the amount. I think  
11 Mr. Stefani may have started at maybe \$9.5 million,  
12 maybe \$10 million on this Harris matter. We started  
13 at a much lower amount, and we negotiated the amount  
14 back and forth, until we reached -- and he was not  
15 moving off -- I think he testified to that. He was  
16 not moving off the amount of money in which his --  
17 which his clients had been awarded. He was not -- he  
18 was not moving below that. And we found that out  
19 during the course of negotiations, because at -- for  
20 whatever reason, he probably felt he could have  
21 gotten that in the Court of Appeals had he gone that  
22 far. He was not moving off that -- off that figure,  
23 but he started at a much higher figure. So we  
24 negotiated down to the \$8,000,000.00 figure, and at  
25 that point, the attorneys decided that we -- we

1                   needed to go with that.

2                   COUNCIL MEMBER JONES: Inasmuch as you  
3                   didn't know about these documents, most of them, and  
4                   neither did the Council, do you believe that the  
5                   actions of your department compromised Council's  
6                   ability to make an informed decision on this case?

7                   THE WITNESS: I think in retrospect it  
8                   does call for a discussion. As I mentioned, Ms.  
9                   Collins, a discussion -- a protocol in future. It's  
10                  obvious that even though this has been a history for  
11                  the Law Department, in terms of how they communicate  
12                  settlements to the Council, and I do believe again  
13                  this is an aberration, as opposed to the norm, in  
14                  terms of this matter because of what it involves, but  
15                  given the concern of this -- of this Council in terms  
16                  of what was given to them, I think it does require  
17                  now a discussion of future protocol and what  
18                  information should be given.

19                  The memo that Ms. Colbert-Osamuede  
20                  gave you is -- is the -- patterned after memos that  
21                  are given to you all the time, by every attorney in  
22                  the department that settles a matter. If there's a  
23                  desire of this body to expand on that, and to provide  
24                  more information, then certainly we'll be happy to do  
25                  that. But the pattern she follows is one that has

1           been followed way before I came on the scene, so --  
2           and apparently it's been acceptable in the past.  
3           Just in this one instance, it apparently did not  
4           reveal information to you that you wanted to hear.

5                       Now, Ms. Col -- Ms. Colbert-Osamuede,  
6           when she appeared at the Internal Ops Committee, was  
7           not questioned, and I understand that she was not  
8           questioned by anyone about this -- of anything of  
9           substance. Had there been any questions, and given  
10          the fact that we had had a September 19th closed  
11          hearing, and apparently there was opportunity for  
12          this body to ask Ms. Colbert-Osamuede well why is  
13          there suddenly a turn-around, and I don't think that  
14          question was asked.

15                      And certainly, we receive questions on  
16          other matters. Even going into the closed session.  
17          We -- we have received eight questions from this body  
18          to answer. We answered all of those at the closed  
19          session. So -- and in the past we've received  
20          questions from this body on matters and why we  
21          settled them. None were forthcoming on this case.

22                      So, if there was any questions asked  
23          about this matter, the settlement, we would have  
24          revealed -- we would have answered those questions,  
25          but none were asked. Was there an attempt again to

1 keep this from you? No. The discussion between me  
2 and -- and Ms. Colbert-Osamuede was never had in  
3 terms of any agreement that was -- that was made on -  
4 - after I left the facilitation, and there was no  
5 discussion as to what to -- what to advise or not to  
6 advise; she wrote the memo; she gave it to me; I  
7 signed it, as I normally would in a settlement  
8 matter, and she brought it over here.

9 However, again, given the concerns of  
10 this body, if the pattern that's been used by the Law  
11 Department over scores of years is not acceptable  
12 now, then I think there needs to be a discussion to  
13 change that.

14 COUNCIL MEMBER JONES: Let -- let me  
15 just say, Attorney Johnson, just like you didn't know  
16 to ask for this stuff, because you didn't know it  
17 existed, and you didn't know that (inaudible)  
18 confidentiality agreement, neither did we. So we  
19 didn't know to ask for it.

20 But nevertheless, let me just ask you  
21 -- okay, I forgot what I was going to ask you. You  
22 can put me down on the list.

23 COUNCIL PRESIDENT COCKREL: Council  
24 Member Reeves.

25 COUNCIL MEMBER REEVES: Thank you, Mr.

1 President. Thank you, Mr. Johnson, for your patience  
2 and diligence.

3 Since the beginning knowledge of this  
4 trial, I've had problems sleeping, and I had to  
5 defend myself and say I haven't done anything. So I  
6 feel guilty about nothing. Then I have to realize  
7 that we are involved in the City Council and  
8 representing the city of Detroit.

9 This session started off by Mr.  
10 Goodman, our -- our counsel, saying that there was no  
11 mention of an appeal -- plan of an appeal, and I  
12 didn't know that the -- the private session that we  
13 held could be discussed, and on page seven of our  
14 closed session, it says right here (inaudible) the  
15 Mayor has indicated he plans to appeal the verdict.  
16 So there was the statute of limitations for an  
17 appeal. All of this was discussed in -- in detail by  
18 not only you and Ms. Colbert-Osamuede, but you went  
19 into detail about a seven-day rule and a whole lot of  
20 things, so there was a mention of a -- of an appeal,  
21 page seven, line 11, 13, 14, 15 -- page eight --  
22 eight, nine, and ten, and even the cost was  
23 discussed. (Inaudible) there was a reason to mention  
24 the fact that there was an appeal considered. The  
25 case -- the trial -- I was asked (inaudible) played a

1 big part in this case should the Mayor appeal and I  
2 said absolutely not (inaudible) had it gone -- the  
3 cost is far more than what has been settled for, and  
4 it's like living with someone after you divorce them.  
5 I certainly hope you continue to represent us, and if  
6 our terms or rules should be amended (inaudible) then  
7 I'm all for that.

8 THE WITNESS: Thank you, Council  
9 Member --

10 COUNCIL MEMBER REEVES: But I  
11 appreciate -- I appreciate (inaudible) straighten out  
12 some of the questions that have come into this  
13 hearing. I feel a little better now that I've heard  
14 all the details, and I'm so glad you're the last  
15 witness. Thank you.

16 THE WITNESS: Thank you.

17 COUNCIL PRESIDENT COCKREL: Council  
18 Member Cockrel.

19 COUNCIL MEMBER COCKREL: Thank you.

20 Mr. Johnson, the -- this morning we  
21 heard very compelling testimony from Attorney Carl  
22 Edwards, and one of the things he said -- his  
23 background that as lawyers, the threshold -- the  
24 standards of the Code of Professional Conduct doesn't  
25 permit an answer to be we just didn't know about

1 matters, and so at some point I assume that will be  
2 explored more carefully.

3 My -- my question goes to something  
4 else that was said by Mr. Edwards this morning, and  
5 that is that when Mr. Stefani, and I get to use Mr.  
6 Goodman's term, teased outside counsel McCargo with  
7 this motion, why didn't any member of this settlement  
8 agreement defense team decide to say whoa, wait a  
9 second, we better get back in front of the judge and  
10 get a protective order, get a motion to seal those  
11 documents, have an in camera review, and get gag  
12 orders? Why instead of doing any of that was there  
13 an oh, whatever on it (inaudible) to begin with and  
14 should have never been signed.

15 THE WITNESS: I believe -- gag order,  
16 I believe that Judge Callahan had lifted the gag  
17 order. That's the reason why there was so much media  
18 --

19 COUNCIL MEMBER COCKREL: -- could  
20 have, based on the motion, gone back in -- this is  
21 all one question, Mr. Cockrel, gone back in and said  
22 here's this motion; we got -- we need time on this,  
23 because of the potential damaging exposure to this  
24 (inaudible) these text messages may have. Why was  
25 not that done?

1 THE WITNESS: I believe that Mr.  
2 McCargo did address the discussion of protective  
3 order, which I did raise -- I'm not sure I raised it  
4 at that point, but I did raise it later, and the  
5 response that -- after consultation that I had with  
6 the attorneys is that it would have reopened the  
7 matter and probably would have exposed the text  
8 messages anyway, which was -- would have defeated the  
9 purpose of trying to get the matter resolved.

10 COUNCIL MEMBER COCKREL: That sounds  
11 like some series of circular logic.

12 My -- my next question would be to ask  
13 you to respond to a statement -- question I posed to  
14 Mr. Edwards this morning. If you invoke the  
15 reasonable person standard, would it be fair to say  
16 that given the testimony that we've heard over these  
17 three days, that a reasonable person could conclude  
18 that -- the Law Department and the outside counsel's  
19 intent to seal the text messages at all costs, that  
20 was the motivator? To not go get the court -- not do  
21 anything but get rid of this stuff so Council, the  
22 media, would -- never knew about it?

23 THE WITNESS: Probably not at all  
24 costs, because there was negotiations, but certainly  
25 there was -- and I've expressed that -- there was a

1           desire on the part of the defense team to make sure  
2           that the text messages were not put into the public  
3           domain; the reasons that I articulated earlier. But  
4           to say at all costs I think it not true, because  
5           there was negotiation and the matter was settled for  
6           the amount that was actually owed. So -- and -- and  
7           the Harris matter was settled for substantially less  
8           than what we thought the liability would have been,  
9           and so that was a contributing factor as -- as  
10          devised by again the people who were there put -- put  
11          the Harris matter on the table was a motivating  
12          reason to settle this whole case.

13                   COUNCIL MEMBER COCKREL: Question --  
14           yesterday to Ms. Colbert-Osamuede was that in light  
15           of everything that's happened, in retrospect, did she  
16           believe that the Council had a right to know about  
17           the text messages and their role in all of this --  
18           2004, never shared, that -- that should have been  
19           shared with the Council as an issue in relation to  
20           this case, and I believe her testimony was that she  
21           felt in retrospect that it should have been. What  
22           would be your answer today, sir?

23                   THE WITNESS: Well, first of all, I  
24           have to say that it depends on how the information  
25           was received, because it could have been privileged,

1 and that cannot be revealed, because if you do that,  
2 then you are looking at other consequences. So --  
3 so, a lot of that would depend on how the information  
4 was received. You cannot reveal the confidence of a  
5 client. Given that information, and in other  
6 instances that we brought before the Council in some  
7 police misconduct cases and other matters, there's  
8 information that's been revealed to the attorney that  
9 has not been revealed, because they just cannot do  
10 that because of the Canons, so the situation -- it  
11 depends on the situation, how they came to the  
12 attention of the attorney would -- would have a lot  
13 of bearing on whether or not they even could be  
14 revealed to the Council.

15 COUNCIL MEMBER COCKREL: Last  
16 question; based on your testimony earlier relative to  
17 FOIA matters, I want to be clear here; you've  
18 indicated that with all these FOIA things flying back  
19 and forth on this case that had been lost in court,  
20 you never asked to see the documents that the Free  
21 Press was asking to be produced?

22 THE WITNESS: Again, we get -- you  
23 know, we get tons of FOIA requests, Council Member  
24 Cockrel --

25 COUNCIL MEMBER COCKREL: Mr. -- I

1 understand that, Mr. Johnson, but we're talking about  
2 the Mayor just got trashed in the court with the  
3 chief of staff --

4 THE WITNESS: And --

5 COUNCIL MEMBER COCKREL: -- it was a  
6 huge issue and the Free Press is right up here saying  
7 we want to see this, this, and this, and you didn't  
8 say okay, team, what's going on here --

9 THE WITNESS: Well, I did --

10 COUNCIL MEMBER WATSON: -- get me all  
11 this stuff --

12 THE WITNESS: Well --

13 COUNCIL MEMBER COCKREL: I'm the Corp  
14 Counsel, and I'm on the line --

15 THE WITNESS: Right.

16 COUNCIL MEMBER COCKREL: -- I'm the  
17 chief defender of all of this stuff.

18 THE WITNESS: When it was brought to  
19 my attention by Ms. Ha, we did have a discussion, and  
20 I asked her what documents there were. She reports  
21 to me, but she went to Ms. Colbert-Osamuede, was told  
22 that there was no final agreement yet. I think  
23 that's reflected in the letter that was sent from Ms.  
24 Ha to the Free Press, that there was no final  
25 agreement. So as a result there was nothing to

1 produce, according to my brief discussion with Ms. Ha  
2 about this. And she did send me an e-mail and we did  
3 talk about it, and she did report to me that based on  
4 her discussion with Ms. Colbert-Osamuede, that there  
5 was no final agreement.

6 COUNCIL MEMBER WATSON: Mr. --

7 THE WITNESS: As a result, the letter  
8 was sent out to the Free Press. Now, when the second  
9 request came, and by that time there was a final  
10 agreement, and that's what was sent to the Free  
11 Press.

12 COUNCIL MEMBER COCKREL: Mr. Johnson,  
13 I must say that this is thoroughly reminiscent of  
14 (inaudible). Thank you.

15 COUNCIL MEMBER WATSON: You're  
16 welcome; Council Member Brenda Jones.

17 COUNCIL MEMBER JONES: Thank you.  
18 Mr. Johnson --

19 THE WITNESS: Yes.

20 COUNCIL MEMBER JONES: -- you said you  
21 did not know about the settlement rejection until  
22 January the 25th (inaudible). Is it (inaudible) deal  
23 with the policies and procedures, is it or has there  
24 been any other cases where Council approves something  
25 in writing, it was denied, and the Law Department did

1 not come back to Council to get an approval  
2 (inaudible)?

3 THE WITNESS: I'm not sure if I  
4 understand the question, Council Member Jones. What  
5 was denied -- oh, you mean exactly like this?

6 First of all, let's be clear that this  
7 was done by the Mayor's attorney, Samuel McCargo --

8 COUNCIL MEMBER JONES: I understand  
9 that, but I'm --

10 THE WITNESS: -- so --

11 COUNCIL MEMBER JONES: -- are there  
12 any other previous cases that you are aware of --

13 THE WITNESS: No -- no -- no -- no.  
14 But these documents again -- the rejection, the  
15 acceptance, all that was done by Mr. McCargo in  
16 consultation with his -- with his client, Mayor  
17 Kilpatrick, and -- and I think Ms. Colbert-Osamuede  
18 testified that she hadn't even -- had no knowledge of  
19 these documents either. That was between the Mayor  
20 and his lawyer. We represented -- Ms. Colbert-  
21 Osamuede represented the City of Detroit, so she had  
22 no knowledge of these documents, I think she  
23 testified to that, because this was between the Mayor  
24 and Mr. McCargo, and she received these notices  
25 herself, I believe she testified, on -- I think she

1 said December 5th, I believe; I think she said that  
2 she received these herself.

3 COUNCIL MEMBER JONES: I don't know if  
4 I asked you this, but if I did ask you -- due to the  
5 nature -- talking about the Mayor of the City of  
6 Detroit, why did you not feel it necessary to review  
7 basically all of the critical information in this  
8 case, since you represented the City, the City  
9 Council, and the Mayor?

10 THE WITNESS: When you say the  
11 critical information, could you be more specific?

12 COUNCIL MEMBER JONES: The major  
13 highlights of this case. You know, I understand you  
14 said there was a file this big, but I'm sure that  
15 (inaudible) I'm sure she could have briefed you  
16 (inaudible) critical information; would you say that  
17 she briefed you on what you thought or what she  
18 thought was all of the critical information, and  
19 today would you say that you were aware of all the  
20 critical information?

21 THE WITNESS: Well, I'd say she  
22 briefed me on what probably she perceived to be the  
23 critical information. Did we have a dialogue? Yes.  
24 Did we talk about the case? Yes. And predominantly,  
25 our discussions were held probably more during the

1 trial and post-trial, because as I explained, this  
2 matter was managed by Ms. Braceful until she resigned  
3 in August. The trial began in late August, and  
4 during that time, she certainly was busy preparing  
5 for the trial with Mr. McCargo and Mr. Copeland. So  
6 a lot of time was spent prepping for the matter, so  
7 we did not have a lot of dialogue then.

8 I learned a lot about the case  
9 actually by attending the trial, and attending a lot  
10 of the testimony, so I could learn about the case  
11 myself, because I really didn't know a lot about it,  
12 because I had not been involved in the day-to-day  
13 management of the matter until it actually went to  
14 trial. So, I took it upon myself to attend the trial  
15 to hear critical parts of the testimony, just so I  
16 could become familiar with the case, because I did  
17 not have knowledge of it.

18 So after the case was over, then I  
19 think Ms. Colbert-Osamuede testified that she was so  
20 backed up, and she was involved in trying to -- to  
21 attend to matters which had been attended to during  
22 the month of August, so there was some dialogue  
23 between us then, but again not an awful lot.

24 But she did come to me and we did talk  
25 about the matter, and especially again during the

1 trial, as we discussed the testimony, and we  
2 discussed aspects of it; some of the motions that  
3 were made. So those things we did talk about as best  
4 as we could with the time that she had. Then  
5 following the trial, then she went off to attend  
6 other matters, which I understand, and then we had  
7 dialogue, and I can't say how much, probably in the  
8 latter part of September about it. She probably did  
9 inform me that she was going to the facilitation.  
10 Surely we talked about the case in preparation for  
11 the closed session in order to advise the Council  
12 where we were on that, so there was a briefing for me  
13 in regards to that.

14 Post the facilitation, with the matter  
15 being in my mind resolved, because we had gone to  
16 facilitation and had agreed to a settlement amount,  
17 there wasn't that much discussion after that, because  
18 in my mind the matter had been resolved.

19 COUNCIL MEMBER JONES: You had  
20 informed Council that you thought it would set a bad  
21 precedent to appeal the case --

22 COUNCIL MEMBER COCKREL: To settle.

23 COUNCIL MEMBER JONES: I'm sorry?

24 COUNCIL MEMBER COCKREL: To settle the  
25 case.

1 COUNCIL MEMBER JONES: To settle it;  
2 yes, I'm sorry. Did you change your mind (inaudible)  
3 or what reason did you change your mind?

4 THE WITNESS: Well, I think I said  
5 certainly there is a number -- there's two or three  
6 factors, but -- and certainly one of the motivating  
7 factors was that Mr. Stefani alleged that he had text  
8 messages, which we knew would cause some problems for  
9 the City of Detroit if they were revealed, based on  
10 the information that we had. But, as I mentioned  
11 earlier, the other factors, and I know a big one for  
12 Ms. Colbert-Osamuede was the settlement also of the  
13 Harris matter.

14 COUNCIL MEMBER JONES: Which --

15 THE WITNESS: Which we knew again  
16 would probably result in a large verdict, given just  
17 coming off the Brown/Nelthrope matter. So that was  
18 probably the second most important factor that led us  
19 to want to resolve the matter. When Mr. Stefani put  
20 that on the table -- that's why she called me,  
21 because she indicated that Mr. Stefani wanted to  
22 resolve both Harris and Brown, and that was one  
23 reason why (inaudible) alleged he had a -- had access  
24 to the text messages. So, that's the reason why she  
25 called me. So certainly, that was a motivating

1 factor behind deciding that we needed to talk about  
2 resolving this matter. In addition to -- as I  
3 mentioned earlier, the -- what we knew would be the -  
4 - the cost of the appeal, and that certainly was  
5 always in the back of our minds that -- that if we  
6 lost, how much more money we would have to pay out if  
7 we had lost the appeal. So -- so that was another  
8 factor, but again the -- the motivating factors would  
9 have been the -- Mr. Stefani's motion and the Harris  
10 matter that was also put on the table.

11 COUNCIL MEMBER JONES: Thank you, Mr.  
12 Johnson. Thank you Madame Chair.

13 COUNCIL MEMBER WATSON: (Inaudible)  
14 myself and then Member Talabi. Good afternoon again,  
15 Attorney Johnson.

16 What harm do you think would have  
17 occurred if this Council had known about the text  
18 messages at the point that you knew of their  
19 existence?

20 THE WITNESS: Now -- okay, just so I  
21 clarify my knowledge of existence before -- I knew  
22 that they existed and what the -- what we surmised  
23 were in them based on what -- when they were actually  
24 published and what was shown in the newspaper, so  
25 what time period are you talking about, Council

1 Member Watson?

2 COUNCIL MEMBER WATSON: I'm not  
3 assuming or referring that you actually documents or  
4 even had actually read documents, but there were some  
5 things (inaudible) text message threat from Stefani  
6 that caused this (inaudible) fast-forwarding of  
7 settlement, which was a complete turn-around from  
8 what Council had been told weeks earlier, so I'm  
9 trying to ascertain what you felt the harm would be  
10 for the Council and even the City, not the Mayor --  
11 to the Council and the City -- what harm would be  
12 suffered if the text messages had become public?

13 THE WITNESS: Okay. They became  
14 public. Again, our thinking, based on what we knew  
15 that we thought it would harm relationships. It  
16 would harm the business, government relationships,  
17 union relationships, because of what we were told --  
18 the Law Department, and not me personally, but argued  
19 in the motions filed in the matter previously were  
20 told that may have been in those text messages. So  
21 there was concern that a lot relationships would be  
22 harmed and perhaps it -- irreparably harmed if they  
23 had been revealed. So that was a motivating factor  
24 behind wanting to quash these subpoenas back in 2004,  
25 and certainly a motivating factor for us when I was

1 brought into it in wanting to resolve the matter of  
2 October 17th.

3 COUNCIL MEMBER WATSON: And since the  
4 Council has a fiduciary responsibility, and it's a  
5 co-equal branch of government along with the  
6 executive branch, what harm could there have been --  
7 if the text messages had been known to the City  
8 Council?

9 THE WITNESS: Yeah. That was never  
10 discussed, but I don't see where any harm would have  
11 -- would have come, assuming that that had been done  
12 in closed session, based on what we thought were in  
13 them. I -- I don't see where that would have been  
14 any harm.

15 COUNCIL MEMBER WATSON: So based on  
16 that, the existence of the text messages is a factor  
17 in the settlement process -- should have -- should  
18 have been (inaudible) no harm (inaudible).

19 THE WITNESS: Could have been -- could  
20 have been revealed to the Council, and certainly  
21 again had there been -- Ms. Osamuede came over for  
22 the Internal Ops Committee, and appeared before them.  
23 Had there been discussion about that, I would venture  
24 to say that she would have entertained those  
25 questions. I don't know, but I would venture to say

1 that she would, and I think she testified yesterday -  
2 -

3 COUNCIL MEMBER WATSON: Yeah, but see  
4 the committee is not the Council.

5 THE WITNESS: Right. But that's the  
6 first step.

7 COUNCIL MEMBER WATSON: (Inaudible)  
8 every single day, so I -- that would be an indictment  
9 of the committee process, what you just said.

10 Member Talabi?

11 COUNCIL MEMBER TINSLEY-TALABI: Thank  
12 you very much, and good afternoon.

13 THE WITNESS: Good afternoon.

14 COUNCIL MEMBER TINSLEY-TALABI:  
15 (Inaudible) and to that end, Mr. Copeland testified  
16 that the supplemental motion for attorney fees that  
17 Mr. Stefani shared with Mr. McCargo on October 17th,  
18 had no bearing on settling this case. Do you agree  
19 with that statement?

20 THE WITNESS: Mr. --

21 COUNCIL MEMBER TINSLEY-TALABI: Mr.  
22 Copeland.

23 THE WITNESS: -- Copeland? No, I  
24 don't agree with that.

25 COUNCIL MEMBER TINSLEY-TALABI: You do

1 not agree with it?

2 THE WITNESS: No.

3 COUNCIL MEMBER TINSLEY-TALABI: Okay.

4 So, can you help me understand, because at one time  
5 during Mr. Stefani's testimony, he indicated that he  
6 could have settled the case for \$2.2 (inaudible) and  
7 another time for \$4,000,000.00. So if the  
8 supplemental motion had no bearing (inaudible)?

9 THE WITNESS: Again, I wasn't involved  
10 in the matter back in those stages. Again my  
11 involvement -- came in August 2007, so I believe Mr.  
12 McCargo and Ms. Colbert-Osamuede testified as to the  
13 settlement history on this matter, and even in the  
14 closed session I believe that they did that. So I  
15 have no personal knowledge of that.

16 COUNCIL MEMBER TINSLEY-TALABI: Okay.  
17 I won't ask if you had had the opportunity back then  
18 I would (inaudible) can you describe your  
19 relationship with special counsel (inaudible)  
20 Brown/Nelthrope case?

21 THE WITNESS: Well, my relationship  
22 with (inaudible) special counsel has evolved in the  
23 past eight months now that I don't have a deputy, and  
24 for instance -- special counsel -- brought in to  
25 handle matters relating to this have been much

1 different than they were back then. The litigation  
2 it was handled by Ms. Braceful, so she would have had  
3 immediate and direct contact with special counsel on  
4 this matter. My entry into the case in August 2007  
5 again at the -- I say 11th hour, really at the -- the  
6 -- almost at midnight, and I've learned a lot in the  
7 past eight months in terms of relationship with the  
8 special counsel and what I need to know from them.  
9 So -- so it has evolved, where now I am more in touch  
10 with special counsel on matters than certainly I  
11 would have been back then, because of my  
12 understanding now of their role, what they do, and  
13 how I need to direct some of their activities. So --  
14 so back then it was not at all close, with Mr.  
15 McCargo not at all close. I recognize him as what --  
16 and I think yesterday there was some discussion who  
17 was the lead attorney. I did see him as the lead  
18 attorney -- that was what was articulated to me as a  
19 lead attorney on the matter. I think that was not --  
20 I don't think that was testified to yesterday -- he  
21 was by himself, but that was my understanding when I  
22 first began to touch this matter last August. But I  
23 certainly -- I saw Ms. Valerie -- Ms. Valerie  
24 Colbert-Osamuede as being my direct contact with the  
25 matter. So she was the one who was in constant

1 contact with Mr. McCargo, and Mr. Copeland, because  
2 he was her -- her co-counsel.

3 COUNCIL MEMBER TINSLEY-TALABI:

4 (Inaudible) Mr. McCargo (inaudible) by default,  
5 because there was no (inaudible).

6 My last question is we were  
7 represented by Ms. Osamuede (inaudible) and Mr.  
8 Copeland because they represented the City. So can  
9 you explain why Council was not made aware of the  
10 Confidentiality -- Confidentiality Agreement?

11 THE WITNESS: Okay.

12 COUNCIL MEMBER TINSLEY-TALABI: Again.

13 THE WITNESS: Right. Again, I don't -  
14 - there was no discussion between me and Ms. Colbert-  
15 Osamuede about that before she appeared on October  
16 the 18th in front of the Internal Ops Committee, so -  
17 - and as a matter of fact, I -- as I mentioned, I  
18 didn't know that there was a Confidentiality  
19 Agreement that had been executed the night before, or  
20 at least a settlement that had provisions in it. So  
21 I don't believe there was any deliberate intention to  
22 not reveal that to the Council. I think as she  
23 testified, there's other matters that she's handled  
24 in which there's been a confidentiality agreement and  
25 she's not discussed that with this body (inaudible)

1 have to assume she feels the same way in this  
2 instance; that -- and this document, again from my  
3 understanding even from reading Mr. Stefani's  
4 testimony was a tentative agreement. I think that's  
5 -- as I read his deposition, that's said throughout  
6 there, that it was tentative. That there were  
7 conditions precedent that had to be met. So, again  
8 assuming that even when Ms. Colbert-Osamuede left the  
9 meeting she didn't see that as being the agreement,  
10 because I think she testified that they knew they  
11 were going to develop two agreements later on, one  
12 for Harris and one -- and one for Brown, so again  
13 based upon her testimony and discussion I had with  
14 her, it appears that she didn't think that this was  
15 the agreement anyway, and that there would be  
16 something else that would have been -- so all of that  
17 would attribute to her (inaudible) in addition to the  
18 history that she's had in employment-related matters,  
19 which contribute to her decision that this was  
20 something that was not shared with Council, because  
21 she had not done it in the past. But there was no  
22 discussion between me and her of whether should  
23 whether should not, it was not mentioned at all  
24 before she came over here on October 18th.

25 COUNCIL MEMBER TINSLEY-TALABI: Thank

1                   you.

2                               COUNCIL PRESIDENT COCKREL: All right.  
3                   President Pro Tem.

4                               COUNCIL PRESIDENT PRO TEM CONYERS:  
5                   Thank you. How many cases does Corporation Counsel  
6                   handle every year, just roughly? You can  
7                   guesstimate.

8                               THE WITNESS: Yes, I will guess. I  
9                   would say probably --

10                              COUNCIL PRESIDENT PRO TEM CONYERS:  
11                   Tens of thousands?

12                              THE WITNESS: No, no, no.

13                              COUNCIL PRESIDENT PRO TEM CONYERS:  
14                   Thousands?

15                              THE WITNESS: No. I'd say -- I've  
16                   been told that we might get maybe 20, 25 lawsuits per  
17                   week that come into the office on various -- various  
18                   matters. Then we also have our own lawsuits that we  
19                   bring in collection matters. So -- and those are  
20                   filed constantly, trying to collect that. So we may  
21                   be talking about maybe 2,500 at least --

22                              COUNCIL PRESIDENT PRO TEM CONYERS: A  
23                   year?

24                              THE WITNESS: Yeah, at least, probably  
25                   a year.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Okay. What is the budget of the Law Department and how many -- and can you include how many employees you have; I think you said 80 employees?

THE WITNESS: No, no. We have about

143 employees. I think our budget is about \$21,000,000.00.

COUNCIL PRESIDENT PRO TEM CONYERS:

Okay. Now, Council -- I mean Ms. Osamuede said that she was told about the text message by past corporate counsel, Ruth Carter. Did she ever tell you what she had heard from previous corporation counsel, or did you ever see them?

THE WITNESS: I never saw them. She did tell me what she had heard, but it was subsequent to me having a discussion with Ms. Braceful about them. At some point, we did have a discussion about them.

COUNCIL PRESIDENT PRO TEM CONYERS: M,

last question; were you trying to save the City of Detroit and this Council embarrassment and money by settling this case and that we only settled for what the jury verdict -- for what the jury actually told us we had to pay?

THE WITNESS: Yes. There was an

1 attempt to save the City of Detroit, which would  
2 include this Council, from possible embarrassment if  
3 what we believe were the contents would be released,  
4 and again, our belief was limited to what I had  
5 mentioned earlier, the -- the personal exchange of  
6 information between Ms. Beatty and other members of  
7 government; the sensitive information regarding labor  
8 negotiations; the deliberative process; all of those  
9 matters which we were told were contained in the text  
10 messages. There was a -- certainly there was a -- a  
11 fear that if they got out into the public domain that  
12 it would cause embarrassment for the City of Detroit.

13 COUNCIL PRESIDENT PRO TEM CONYERS: So  
14 we only paid what we were told to pay by the -- by  
15 the jury verdict?

16 THE WITNESS: Yes. We paid what -- we  
17 paid what was -- yeah, exactly, the verdict was \$6.5  
18 million, with interest it was -- it became the \$7.9.

19 COUNCIL PRESIDENT PRO TEM CONYERS:  
20 Would you do anything different in hindsight than  
21 what you had previously done? Or better, what -- how  
22 could this process be made better --

23 THE WITNESS: Right.

24 COUNCIL PRESIDENT PRO TEM CONYERS: --  
25 for the residents of the city of Detroit?

1 THE WITNESS: Right. Well, given all  
2 that's happened here, certainly one would do  
3 something different than one did before. And again,  
4 this has certainly been a experience where you now  
5 take what you've learned and you move forward to  
6 develop a better process to make sure it doesn't  
7 happen again.

8 COUNCIL PRESIDENT PRO TEM CONYERS:  
9 Thank you, Mr. President.

10 COUNCIL PRESIDENT COCKREL: You're  
11 welcome. Are there any further questions from  
12 Council members?

13 COUNCIL MEMBER WATSON: I have a  
14 couple, Mr. President.

15 COUNCIL PRESIDENT COCKREL: Mm-hmm.

16 COUNCIL MEMBER WATSON: Thank you.

17 If Valerie Colbert-Osamuede  
18 represented the City, and Sam McCargo represented the  
19 Mayor, was it appropriately done?

20 THE WITNESS: Well, I think she  
21 testified that he was her co-counsel and assisted  
22 her; the labor and employment section, since I've  
23 been corporation counsel, we have four attorneys. I  
24 think there's a fifth one now. We brought in  
25 somebody a few months ago. But only four attorneys

1 to handle all the labor and employment matters --  
2 well, not all of them, but the majority of the -- of  
3 the employment matters for the City of Detroit, and I  
4 think she testified that she needed assistance. So  
5 Mr. Copeland was brought in, I believe, to assist  
6 her, as he did because resources which -- which we  
7 could rely on to assist her in litigating the matter.  
8 So, he was (inaudible) as much an aide to Ms.  
9 Colbert-Osamuede.

10 COUNCIL MEMBER WATSON: If Attorney  
11 McCargo was, in you testimony, the quote "lead  
12 counsel" I don't understand how the City would be  
13 represented, because Attorney McCargo testified that  
14 he only represented the Mayor.

15 THE WITNESS: Right.

16 COUNCIL MEMBER WATSON: And not the  
17 City of Detroit, not City Council.

18 THE WITNESS: And I said that was what  
19 (inaudible) he was designated as; that's what I was,  
20 I think, told by maybe even Ms. Braceful, that he was  
21 seen as -- and lead attorney is not -- I think maybe  
22 in terms of experience, in terms of -- of making --  
23 bringing forth a lot of the motions that had to be  
24 made in the matter on behalf of the Mayor, and joined  
25 in by the City of Detroit and a lot of -- of the work

1 that he did. I think that because of his experience,  
2 35 years of experience, was looked to as the -- as  
3 the lead may not be the right word, certainly the  
4 senior attorney --

5 COUNCIL MEMBER WATSON: Be careful who  
6 you're calling an elder --

7 THE WITNESS: But he was --

8 COUNCIL MEMBER WATSON: -- on  
9 dangerous ground.

10 THE WITNESS: But when you look at his  
11 experience, Ms. -- Ms. Colbert-Osamuede had half the  
12 years experience in trials as Mr. McCargo, so I think  
13 he was probably looked up to as the person with the  
14 knowledge and experience.

15 COUNCIL MEMBER WATSON: (Inaudible)  
16 Harris case was a key factor in the settlement and  
17 not the text messages; would you agree with that  
18 representation?

19 THE WITNESS: I would flip it. No, I  
20 would not -- I would not agree with that. I would  
21 flip it and say that the -- it was the -- certainly  
22 the -- the text messages followed by the Harris  
23 matter.

24 COUNCIL MEMBER WATSON: And finally,  
25 Mr. President, is -- is there were some things you --

1 and of course hindsight is 20/20 -- things looking  
2 back in the rearview mirror -- you had done  
3 differently as related to this body?

4 THE WITNESS: Certainly peruse the  
5 settlement memo and realizing that was a factor,  
6 discuss with Ms. Colbert-Osamuede the discussion of  
7 that issue with this -- with this counsel when she  
8 came over to the Internal Ops Committee.

9 COUNCIL MEMBER WATSON: Thank you very  
10 much. Thank you so much. We know you didn't have to  
11 come.

12 THE WITNESS: Thank you.

13 COUNCIL MEMBER WATSON: I appreciate  
14 (inaudible) thank you. Thank you, Mr. President.

15 COUNCIL PRESIDENT COCKREL: All right.  
16 Any further questions from Council members? Seeing  
17 none, Mr. Goodman, if you have any closing questions  
18 --

19 MR. GOODMAN: I have a few.

20 BY MR. GOODMAN:

21 Q Mr. Johnson, turn if you would in your book there to  
22 the settlement memorandum, the one you just referred  
23 to. I think it's tab four. The settlement  
24 memorandum is supposed to lay out all of the at least  
25 major factors as reasons for settling a case; is that

1 right?

2 A Yes.

3 Q Now, you didn't know anything about the  
4 Confidentiality Agreement, so you -- so at least as  
5 far as you were concerned in reviewing this, the  
6 absence of reference to the Confidentiality Agreement  
7 would not mean anything to you, right?

8 A Right.

9 Q But you did know that the text messages were a  
10 significant part in bringing about the settlement; is  
11 that right?

12 A Yes.

13 Q Is there any reference to the text messages in this  
14 document?

15 A No.

16 Q Is that something in retrospect, since that question  
17 was being asked, that you think could and should have  
18 been disclosed?

19 A I would have discussed that with Ms. Colbert-Osamuede  
20 to make sure that we discussed the issue of  
21 privilege, revealing client confidences and secrets,  
22 and then reach a decision as to whether or not that  
23 should have been contained in here.

24 Q So -- talking about the disclosure of client  
25 confidences, you talked about a police officer who

1           might admit certain things to you or one of your  
2           attorneys -- staff attorneys who represents both the  
3           City and that officer, and those then become the  
4           subject of attorney/client privilege; is that  
5           correct?

6       A     That's correct.

7       Q     In this case, there was no question about what the  
8           source of this information about the text messages  
9           was, it was the lawyer for the other side, the  
10          plaintiffs' lawyer, and there's nothing that's  
11          protected in that particular relationship; is that --

12      A     No, not in that relationship. But there were  
13          discussions between certainly the Law Department and  
14          at some point, and I'm sure the Mayor, about this,  
15          and that would have been privileged.

16      Q     That would have been privileged, but one of the  
17          things that was the impetus for your going over to  
18          the Charfoos office, agreeing to open up the  
19          negotiations and ultimately agreeing to the figures  
20          on the case within several hours, was simply that  
21          Stefani told you he had the text messages and they  
22          could be embarrassing; isn't that right?

23      A     Yes.

24      Q     The -- I want to talk about the FOIA for just a  
25          moment. Who is Ms. Ha's supervisor?

1 A Dennis Mazurick.

2 Q When the -- you mentioned that when this came in, she  
3 sent the request to you, because all FOIA requests  
4 are sent to you --

5 A No. I said that (inaudible) --

6 Q That's right; thank you very much. Do you know  
7 whether she had any discussion with Mr. Mazurick  
8 about the contents of this particular request and any  
9 review of the material involved?

10 A No, I do not know.

11 Q Do you recall if you ever received any written  
12 memorandum in that regard?

13 A No.

14 Q You stated in connection with that FOIA request that  
15 when it came in, Ms. Ha responded to the request by  
16 saying there was no final settlement agreement, based  
17 upon the so-called opt-in provisions in the original  
18 document entitled Settlement Agreement. I want to  
19 refer you to Ms. Ha's letter to the Detroit Free  
20 Press, which I think is found under tab fourteen. Do  
21 you see that?

22 A Yes.

23 Q What she says is not that there is no final  
24 settlement agreement, but that there is no settlement  
25 agreement; isn't that correct?

1 A As parties are working on the details of the  
2 agreement.  
3 Q I'm going to get to that in a minute.  
4 A Yes.  
5 Q But she says there's no final settlement -- she  
6 doesn't say there was no final settlement agreement,  
7 she says there's no settlement agreement; is that her  
8 language?  
9 A That's correct.  
10 Q What's the date of this document?  
11 A October 29th.  
12 Q When did the -- now -- now the agreement was reached  
13 between the parties on October the 17th, and the  
14 document which you say you didn't see until later on  
15 was also dated October 17th, the one -- the first one  
16 called Settlement Agreement; that's correct, isn't  
17 it?  
18 A Yes.  
19 Q On the 18th, the matter comes in front of City  
20 Council; the numbers are presented before City  
21 Council before the committee in open session, and the  
22 committee sends it to the body of the -- of the  
23 whole; is that right, sir?  
24 A Yes.  
25 Q On the 19th, the Freedom of Information Act request

1 comes in, correct?

2 A Yeah, that's the date of it.

3 Q That's the date of it anyway. How many days does the  
4 City have to respond at the outside of such a  
5 request?

6 A I believe it's five business days and then you can  
7 ask for an extension which would be -- which we  
8 routinely ask for, so you're talking about 15  
9 business days to be released.

10 Q Released. In this particular case, on the 27th, the  
11 Mayor filed a notice of rejection of the terms of the  
12 settlement; is that correct?

13 A No, I don't believe it was filed anywhere.

14 Q Well, it was signed on the 27th; is that correct?

15 A That's what it says.

16 Q And then it was on the 29th, that Ms. Ha -- replies  
17 to the Free Press, saying that the terms of the  
18 settlement have not yet been worked out; is that  
19 correct?

20 A That's what it says.

21 Q With regard to the contents of what is in a Freedom  
22 of Information request, you say there are routinely -  
23 - Ms. Osamuede -- Colbert-Osamuede tells you that  
24 there are routinely confidential matters; is that  
25 right? Confidentiality agreements --

1 A I didn't say routinely. That --

2 Q But there are a number of them anyway?

3 A That it's not unusual.

4 Q All right. In that case, and I think this has been

5 asked about, a -- a requesting agency, a newspaper or

6 anyone else, could ask -- file a Freedom of

7 Information Act request upon a public body, namely

8 your office or this body or any other body within the

9 City of Detroit, and ask for all of the papers,

10 terms, and conditions surrounding the settlement

11 agreement, and they have rights under the laws of the

12 State of Michigan to get that material, unless it's

13 protected; isn't that right?

14 A Yes.

15 Q And one way in which material might be protected

16 under the confidentiality agreement is if it is what

17 is called personally privileged material, or personal

18 and privileged material; do you understand that to be

19 the case?

20 A Yes.

21 Q Now, the only way a lawyer is going to know whether

22 something is personal and privileged is if they

23 themselves know what the contents of that material

24 is; is that not correct?

25 A Sure.

1 Q The only way that material that was protected by the  
2 Confidentiality Agreement that was initially  
3 negotiated on October 17th could have been protected  
4 would be if one of the attorneys in your office were  
5 to have reviewed the SkyTel text messages to  
6 determine whether or not it could be withheld from a  
7 Freedom of Information Act request; isn't that right?

8 A Yeah, but you're presuming someone had the SkyTel  
9 messages. No one had them.

10 Q Attorneys who were -- let me put it this way. Mr.  
11 McCargo had a brief which contained the contents of  
12 such messages, or excerpts of those contents; isn't  
13 that right?

14 A Yes.

15 Q Part of the Confidentiality Agreement was that those  
16 messages were to be placed in a -- in a safety  
17 deposit box; is that not correct?

18 A I learned that, yes.

19 Q A safety deposit box which was negotiated by Mr.  
20 Copeland, an attorney for the City of Detroit, as  
21 well as Mr. McCargo, an attorney representing the  
22 Mayor, who was paid by the City of Detroit; is that  
23 right?

24 A Yes. I learned that.

25 Q Once those messages were in that safety deposit box,

1 the only way the contents of those messages could be  
2 withheld from a Freedom of Information Act inquiry  
3 would be if they were reviewed by a member of your  
4 staff; is that not correct?

5 A That's true.

6 Q Do you know whether anyone from your staff,  
7 representing the City of Detroit, ever reviewed those  
8 messages?

9 A No, no one did.

10 Q When this infor -- when the Freedom of Information  
11 Act request then came in for a number of documents in  
12 connection with the settlement, were they routinely  
13 turned over by your office or the City of Detroit to  
14 the newspapers? Let me put it this way. I believe  
15 that they were not and there was an appeal taken from  
16 an order of Judge Colombo; isn't that a fair  
17 statement?

18 A That's true.

19 Q Okay. Just one moment. You've been here most of  
20 yesterday and a good chunk of today. You've  
21 patiently answered questions. You did say you wanted  
22 to respond to one statement that had been made or a  
23 question that had been asked during -- in the course  
24 of questioning. Do you care to do that?

25 A Yes. Mr. -- Mr. President made a comment about -- I

1 forgot exactly what it was now, but somewhat -- not  
2 having control of the Law Department, which is  
3 certainly not at all true. I have four chiefs, who  
4 are reliable and I trust to help me run that  
5 department, and my job entails not only supervising  
6 them, and they supervise the day-to-day work of their  
7 division, in terms of the litigation, but it entails  
8 not only the legal work that goes on, but also the  
9 personal and administrative work that goes on within  
10 that department. As I mentioned earlier, I was hired  
11 because of my skills, I believe, as a manager, and  
12 the people in place have 10, 15, 20 years of  
13 municipal experience. I never, in my 26 years of  
14 managing law offices, micromanaged my attorneys,  
15 unless they report directly to me with -- unless I  
16 was in a position where the people directly below me  
17 handled litigation matters, then I was actively  
18 involved. And I have in that situation -- rose  
19 through the ranks as a supervisor of four attorneys  
20 to a deputy of a department to now the director of a  
21 department, so that each phase, you look at your  
22 responsibilities and what they entail and you act  
23 accordingly. When I was supervisor of an office,  
24 where everyone below me managing litigation, I did  
25 case reviews constantly, I advised them on the

1 matters, I made notes in their files about what it is  
2 I wanted them to do, and we followed up. I'm not in  
3 that -- but as you rise through the ranks, then you  
4 delegate authority and responsibility to the people  
5 who you know have shown themselves to be competent in  
6 order to manage their responsibilities. So, I'm not  
7 in a position now where I have the time or luxury or  
8 the inclination based upon the people who I have  
9 working for me, who have shown to me to be very  
10 competent, professional, and very good at their work,  
11 and certainly much more experienced in what they do  
12 than I am. So I'm not in a position to certainly  
13 dare micromanage someone and tell them what they  
14 should do on a file, because they have more knowledge  
15 of the area than I do. Especially when it comes to  
16 labor and employment. In my years of practicing law,  
17 I tried one labor and employment case, and that was  
18 when I was a staff attorney at Wayne County  
19 Neighborhood Legal Services. That's it. So I'm not  
20 in a position to -- to really supervise Ms. Colbert-  
21 Osamuede, who has 17 years in that area, of how she  
22 should manage a file. I'm looking to her for advice  
23 and counsel on that. Now, certainly I see the policy  
24 implications of running a law office, which I am very  
25 actively involved in doing that, in terms of how

1 things should be organized, how personnel should be  
2 assigned. I'm very happily involved in it. I  
3 mentioned earlier, I'm involving in trying to  
4 construct a new case management system, so that we  
5 are aware of what's going on in the office and can  
6 follow-up on -- on matters that have been assigned to  
7 us routinely. But -- and I have a fiscal department,  
8 which I -- which report to me directly, in terms of  
9 the -- the money that is spent out of the law  
10 department. I have a personnel person, who reports  
11 to me on -- on personnel issues. So, I am very  
12 actively involved and hands-on in terms of -- of --  
13 aspects of my department. The -- certainly the loss  
14 of my deputy in August has put even more  
15 responsibility on me to manage that department. So -  
16 - and it's caused me to be -- to stretch myself in --  
17 in a number of other areas where Ms. Braceful did  
18 address the litigation in the past, now I have to do  
19 that myself, so now I find my days now -- settlement  
20 discussions with the attorneys, where I didn't do  
21 that before, Ms. Braceful did that. So, to imply  
22 that the Law Department is -- is out of control is --  
23 is the furthest thing from the truth that -- that  
24 could be said, because -- because I'm actively  
25 involved in -- on every phase of it. I get matters

1 from this Council daily, and I assign those matters  
2 to the appropriate department, and follow-up on those  
3 matters as best as I can to make sure they've been  
4 done. I follow your agenda, I follow your committee  
5 agendas that come into me every day, to see what's --  
6 what we have on the agenda. I follow-up with the  
7 appropriate chief to find out if they've done their  
8 work. Sometimes they have, sometimes they haven't.  
9 If they haven't, I find out when it's going to be  
10 done. A lot of my work is basically for this body,  
11 because that's what I -- I get constant paperwork  
12 from this Council on requests made by you as to what  
13 you want to see done. And I spend a lot of time  
14 dealing with that. So -- but the litigation aspect  
15 of it, admittedly I've delegated to -- to litigation  
16 experts, and I do have meetings with them to  
17 determine what they're doing on certain cases,  
18 recognizing how my role has morphed over the past  
19 eight months. I've asked for -- and again I  
20 mentioned earlier, high profile cases, try to follow  
21 them. I'm more involved in some cases now than I  
22 imagined I would be, because I'm without a deputy,  
23 you know, but if you never run a major department,  
24 one that touches every aspect of this City  
25 government; we deal with every agency. I get calls

1 constantly from the directors for advice constantly.  
2 Then I think you -- if you were to walk in my shoes  
3 for a day or two, you'd see exactly how I spend my  
4 day, and certainly it's not -- and my attention is  
5 devoted to serving the department and this City  
6 government, and making sure that this department  
7 responds to department heads and to this Council in a  
8 timely and efficient manner. And that is a handful,  
9 Mr. President.

10 Q Thank you, Mr. Johnson.

11 COUNCIL PRESIDENT COCKREL: Mr.  
12 Goodman, I -- I feel I have to respond to that,  
13 because most of that last statement was clearly  
14 directed at me.

15 And I just want to say that first off,  
16 I appreciate the explanation, because it goes a long  
17 way towards enlightening me on what your day-to-day  
18 responsibilities are and the logistics of managing a  
19 department of that size, and all that you have to  
20 deal with in the course of doing that.

21 And I also just as a point of  
22 clarification want to say that what I said was -- I  
23 did not say that the Law Department was out of  
24 control, and I think it's important that I clarify  
25 that, because I have the utmost respect for your

1 colleagues in the Law Department, the attorneys in  
2 the Law Department, and the people at lower levels,  
3 because I've had to deal with and interface with a  
4 number of them, and I know what they deal with on a  
5 daily basis, and I know that many of them have had to  
6 become masters of doing a whole hell of a lot in some  
7 cases with very little resources.

8 I did not say that the department was  
9 out of control. What I did say, and I stand by that  
10 statement, is it seems to me that you did not have  
11 control of that department, because at the end of the  
12 day, the way I look at a situation like this, I kind  
13 of liken it to a situation of say a major military  
14 campaign. Not just a major battle, but one which  
15 could literally win an entire war. And ultimately,  
16 you've got a general, and to use my colleague's term,  
17 the buck stops at the general's desk. Yes, you're  
18 absolutely right, the general is not going to be out  
19 there fighting that war. He's going to turn a lot of  
20 that responsibility over to his colonels and his  
21 majors and his captains and ultimately down to the  
22 sergeants and the grunts who are actually going to be  
23 out there fighting. But at the end of the day, it  
24 seems to me the general's gonna want his -- his  
25 colonel and other folks checking in, saying okay

1 what's happening; keep me posted, let me know what's  
2 going on. And I don't get the sense that that  
3 happened here. I don't. And that's the concern that  
4 I had.

5 Back to you, Mr. Goodman. I'm sorry;  
6 Council Member Jones?

7 COUNCIL MEMBER JONES: Thank you.

8 I just have one question --

9 COUNCIL PRESIDENT COCKREL: Yes.

10 COUNCIL MEMBER JONES: There might be  
11 two. Who do you report to, Mr. Johnson?

12 THE WITNESS: Currently, the Deputy  
13 Mayor, Anthony Adams.

14 COUNCIL MEMBER JONES: (Inaudible)  
15 that Attorney Sharon McPhail said that she was the  
16 general counsel and that you reported to her.

17 THE WITNESS: The Mayor did a  
18 reorganization beginning of the -- well, sometime in  
19 December, and rearranged that structure, so that now  
20 I report to -- to Mr. Adams.

21 COUNCIL MEMBER JONES: Thank you.

22 COUNCIL PRESIDENT COCKREL: Back to  
23 you, Mr. Goodman.

24 MR. GOODMAN: Just one last little  
25 bit.

1 BY MR. GOODMAN:

2 Q Since you mentioned follow-up, I'd like to combine  
3 the idea of follow-up and risk management. I  
4 received some information that you provided to one of  
5 the Council members -- maybe it was to all of them,  
6 with regard to the number of cases you had during the  
7 fiscal year '06/'07, the payouts; you know the  
8 document that I'm talking about?

9 A Yes.

10 Q It seemed to me there were about somewhere between  
11 \$19 and \$20 million dollars in settlements during  
12 that period of time; does that sound about right to  
13 you?

14 A About right.

15 Q Of that, over \$10 million was for police cases; is --  
16 does that sound about right to you?

17 A About right.

18 Q Do you know how many of those cases involved  
19 repeaters?

20 A No, I do not.

21 Q Do you know whether there has been any attempt to  
22 coordinate between your department and the police  
23 department in order to reduce the monetary risk of  
24 the City of Detroit by either training, disciplining,  
25 or supervising in different ways those repeaters who

1 are costing the City so much money?

2 A Yes. And not as actively and vigorously as it should  
3 have been, but we do attend the risk management  
4 council meetings. I've attended on occasion. I've  
5 sent my litigation chief to those meetings. We sent  
6 someone from his shop sometimes to those meetings  
7 where there has been discussion or identifying  
8 repeaters, transferring that information over to the  
9 police department, but honestly, the -- the -- a lot  
10 of the matters that we get now are coming more out of  
11 DDOT than they are out of the police department, in  
12 terms of -- in terms of risk management issues.  
13 We've had discussions with risk management council --  
14 presentation to the Mayor, to the chief of police,  
15 and I believe to the DDOT director last year on what  
16 steps could be taken in order to minimize risk in  
17 those areas. I believe we've also put together an  
18 executive order that will be presented to the Mayor  
19 dealing with risk management issues. So there has  
20 been discussion and there has been concern.

21 Q Are those DDOT cases, DDOT security people?

22 A Drivers.

23 Q Drivers?

24 A Bus drivers.

25 Q All right.

1 MR. GOODMAN: That would -- if there  
2 are no other questions from the members, and I've had  
3 my opportunity to follow-up; I want to thank you for  
4 your cooperation --

5 COUNCIL MEMBER COCKREL: I have --

6 COUNCIL PRESIDENT COCKREL: Yes,  
7 before we excuse the witness, Council Member Cockrel  
8 had a question.

9 COUNCIL MEMBER COCKREL: Thank you.  
10 One last question. I -- I heard somewhere, I'm not  
11 entirely sure where, that internal affairs is now in  
12 the Law Department?

13 THE WITNESS: They moved in -- they're  
14 -- actually, they're occupying space, which they've  
15 not paid for. They -- they moved in maybe in --  
16 sometime in 2006 on the 16th floor, so they occupy  
17 half of that floor -- well, a little more than half  
18 of it, actually. So they've been there since 2006,  
19 as a tenant, so to speak, but he's not -- again, not  
20 received any rent from them, so -- but that's what  
21 happens when your cousins move in. You don't -- you  
22 don't charge them rent all the time.

23 COUNCIL MEMBER COCKREL: Is there any  
24 organizational relationship between the Law  
25 Department and internal affairs as cousins?

1 THE WITNESS: Well, not --  
2 relationship, but certainly there's concern because  
3 of the work that we do in defense of police officers  
4 and having them on the premises, so -- so there has  
5 been measures taken to make sure that the two don't  
6 mix -- they're not on the floor where the -- where  
7 the litigators are that are defending police  
8 officers, but in terms of -- but I know there's  
9 probably some communication between IA and the Police  
10 Trial Board, which is a part of labor and employment  
11 under Ms. Colbert-Osamuede, that -- that works to try  
12 police officers that have been accused of misconduct.

13 COUNCIL MEMBER COCKREL: Do you think  
14 it encourages or discourages officers who might have  
15 matters they'd like to bring to the attention of  
16 internal affairs to find them in the Law Department  
17 of the City of Detroit?

18 THE WITNESS: It might. I'm sure that  
19 was -- it might, yes. I think that's -- that's  
20 certainly possible.

21 COUNCIL MEMBER COCKREL: Okay. I -- I  
22 suspect that that's something others have brought to  
23 the attention of Judge Cook, because it -- in light  
24 of this case and everything that has flowed from it -  
25 - various testimony we've heard here this week,

1           that's a matter of great concern -- thank you.

2                       MR. GOODMAN: Okay. I think that's  
3           it; thank you again, Mr. Johnson.

4                       THE WITNESS: May I say one more  
5           thing?

6                       Ms. Colbert-Osamuede yesterday, at the  
7           end of her testimony, read a statement that I thought  
8           was very compelling, on behalf of the Law Department.  
9           They put something together for me to read, but it's  
10          really repetitive of what she said, but I just would  
11          feel remiss if I didn't leave here without  
12          emphasizing some of the things that she said  
13          yesterday about the Law Department in general, the  
14          hard work (inaudible), Mr. President, and I  
15          appreciate that.

16                      But this entire situation of the past  
17          eleven weeks and -- and how the Law Department has  
18          been unfortunately has caused a schism in the  
19          relationship with the -- with this City Council, and  
20          it certainly has been problematic for us, for me, and  
21          for the law department.

22                      Even some of the testimony I've given  
23          today apparently has not set well with some of the  
24          members here at the table, and -- and certainly I  
25          regret that, because -- Mr. Evelyn indicated

1 initially that my intention was to answer questions  
2 as full as I could, and I thought I was trying to do  
3 that.

4 COUNCIL PRESIDENT COCKREL: You're  
5 free to read the statement, if you choose.

6 COUNCIL MEMBER COCKREL: If you want  
7 to read it, you should feel free.

8 THE WITNESS: Can I?

9 COUNCIL MEMBER WATSON: Absolutely.

10 THE WITNESS: Okay. Okay, thank you.  
11 This is a letter from the employees of the Law  
12 Department.

13 COUNCIL MEMBER WATSON: -- copies?

14 THE WITNESS: Pardon? Yes, I have  
15 copies -- thank you, I appreciate that.

16 The mission of the Law Department is  
17 to deliver excellent and efficient legal counseling  
18 and representation to the executive and legislative  
19 branches of City government as mandated by the City  
20 Charter, including provisions of advice and opinion,  
21 preparation of legislative ordinances and  
22 resolutions, prosecution and defense of all legal  
23 actions for and against the City, prosecution of  
24 Charter and City ordinance violations, and  
25 preparation or approval of all City contracts, bonds,

1 and other written instruments. This is our mission  
2 statement. To many, mission statements represent  
3 merely catchy mantras, intended only to mem -- to  
4 memorialize some ethereal goals of upper management  
5 to package and sell the services of an enterprise.  
6 To the employees of the City of Detroit Law  
7 Department, however, the mission of the Law  
8 Department is lived and manifested daily.

9           The City of Detroit Law Department  
10 employs a diverse group of staff attorneys, who have  
11 been educated at some of the finest law schools in  
12 the country. Law Department attorneys have received  
13 law degrees from schools ranging from Ivy League  
14 institutions, to small relatively unknown law  
15 schools. Many attorneys have master's degrees and  
16 have pursued doctorate degrees, which would allow  
17 them to gain lucrative employment in various  
18 occupations other than the legal profession. In  
19 fact, many Law Department employees have worked in  
20 other professions, as for example, former teachers  
21 and social workers make up the rank and file at the  
22 Law Department. Notwithstanding the employment  
23 options which would readily available to Law  
24 Department employees, these employees recognize that  
25 the perception is that a City of Detroit lawyer works

1 for the City of Detroit because he or she  
2 quote/unquote "has to" because no other employment  
3 opportunities are available. Nothing could be  
4 further from the truth.

5 Contrary to what -- to the image that  
6 is perpetrated in the media, many attorneys employed  
7 by the Law Department have worked in private  
8 practice. Many others are constantly offered  
9 employment opportunities by outside and sometimes  
10 opposing counsel. Such opportunities are routinely  
11 rejected despite the fact that employment outside the  
12 Law Department could offer attractive benefits, such  
13 as higher salaries, a large support staff, and an  
14 opportunity to chase a partnership in a firm.

15 On a daily basis, City of Detroit  
16 employees enjoy silent victories relative to the work  
17 they perform. These victories are considered silent  
18 because they are never published in the media. Yet,  
19 should the City of Detroit receive an unfavorable  
20 verdict or resolution, this result is surely to be  
21 published on the front page of both local newspapers.  
22 Moreover, should one City attorney achieve success in  
23 any manner, such success considered an aberration,  
24 some type of fluke or unnatural result. The result  
25 could not possibly be due to good lawyering on behalf

1 of the City attorney, but rather must have resulted  
2 from bad lawyering on behalf of opposing counsel.  
3 City attorneys deal with this perception on a daily  
4 basis from outside sources, recognizing that such  
5 negative perceptions affect not only City of Detroit  
6 attorneys, but anything and everyone associated with  
7 the City of Detroit.

8 I'm going to skip down here --

9 Should --

10 COUNCIL MEMBER WATSON: Read the whole  
11 thing.

12 THE WITNESS: Okay.

13 Should, for example, a City of Detroit  
14 teacher or student or elected official encounter some  
15 sort of legal or moral difficulty, then the  
16 perception is quote "that's how City of Detroit  
17 teachers or students or elected officials are" end  
18 quote. Yet, should some suburban individual  
19 encounter similar difficulties, then the problem is  
20 only perceived as an individual circumstance. The  
21 presumption of guilt which afflicts all City of  
22 Detroit employees must be dealt with in every matter  
23 which is litigated, there being no benefit of doubt  
24 which will be afforded in cases involving the City of  
25 Detroit and its employees, agents, and elected

1 officials. This is one of the lessons that a City of  
2 Detroit attorney must learn and learn quickly.

3 City of Detroit employees and  
4 residents are not a monolithic group of individuals.  
5 The Law Department employees represent the entire  
6 spectrum of ideologies and mores found in society.  
7 Some Law Department employees were hired during the  
8 current administration; others have seen Mayors come  
9 and go. Some Law Department employees supported  
10 current elected officials and their political  
11 campaigns, other supported the losing candidates. It  
12 would be blatantly unfair to assume that the staff  
13 attorneys at the Law Department are beholden to any  
14 one elected official and would jeopardize the legal  
15 careers and reputations they have taken years to  
16 cultivate for the sake of any one individual.

17 The question that must be answered is  
18 quote, "Given the foregoing, why would a City of  
19 Detroit attorney not seek alternate employment?" end  
20 quote. The answer is quite simple. A City of  
21 Detroit employee must love the city of Detroit to  
22 continue in its employ.

23 At a time when the City of Detroit was  
24 experiencing significant fiscal challenges, its  
25 attorneys voluntarily agreed to tender ten percent of

1 their salaries back to the City of Detroit. The  
2 attorneys agreed to be paid only for nine out of ten  
3 days in a work period, even though in reality, due to  
4 work schedules and appearances mandated by the court,  
5 many employees had to physically come to work on the  
6 tenth unpaid day. This sacrifice was made for a year  
7 and a half at a time when gas prices were soaring,  
8 and the cost of living was increasing exponentially.  
9 The City of Detroit Law Department continued to offer  
10 excellent and efficient legal counseling and  
11 representation to the City of Detroit notwithstanding  
12 the fact that the Department's budget was decreased,  
13 reducing the Department's attorneys and support  
14 staff.

15 One of the most disheartening  
16 byproducts resulting from the recent events involving  
17 the Mayor of the City of Detroit is the effect the  
18 events has had upon the relationship between the Law  
19 Department and the Detroit City Council. Until  
20 recently, the City of Detroit Law Department  
21 attorneys and their clients have enjoyed a somewhat  
22 symbiotic relationship. There was at least a  
23 recognition of the hard work and effort made by Law  
24 Department attorneys in representing the City of  
25 Detroit by City Council, even when the advice of the

1 Law Department attorneys was not well-received. Even  
2 in these difficult times, the Law Department  
3 continues to work hard for the City of Detroit and  
4 its citizens.

5 There are systems and processes in  
6 place to facilitate due process. It is difficult  
7 enough to have to deal with the negative perceptions  
8 manifested and perpetuated by outside forces. The  
9 attorneys employed by the City of Detroit Law  
10 Department respectfully request that Detroit City  
11 Council allow due process to work.

12 COUNCIL PRESIDENT COCKREL: Yes.  
13 Council Member Watson?

14 COUNCIL MEMBER WATSON: Thank you. I  
15 appreciate very much -- very well written --  
16 statement. I just want to say for the record that  
17 this extraordinary legislative hearings the City  
18 Council has had this week are in fact -- due process  
19 called for in the City Charter. There have been  
20 major charges of mayoral misconduct allegations that  
21 have led to indictments and it is the City -- it is  
22 the City Charter that has mandated that this body  
23 move into a due process remedy by having legislative  
24 hearings and receiving public testimony, such as it  
25 has done this week. So the due process you call for

1 in that statement is exactly what's happened this  
2 week. Thank you, Mr. President.

3 THE WITNESS: Thank you, Council  
4 Member.

5 COUNCIL PRESIDENT COCKREL: You're  
6 quite welcome. And if there is nothing else from  
7 colleagues, and nothing else from Mr. Goodman, Mr.  
8 Johnson, I'll thank you very much for your time. You  
9 may be excused.

10 THE WITNESS: Thank you.

11 MR. GOODMAN: Thank you very much, Mr.  
12 Johnson.

13 COUNCIL PRESIDENT COCKREL: Yes.  
14 Council Member Cockrel? Is this for Mr. Johnson or  
15 is this just a general statement?

16 COUNCIL MEMBER COCKREL: No. Just a  
17 general statement; thank you.

18 I just wanted to indicate that I think  
19 Mr. Goodman has been extraordinary.

20 COUNCIL PRESIDENT COCKREL:  
21 Absolutely.

22 COUNCIL MEMBER COCKREL: -- job in a  
23 very, very difficult situation. I think you have  
24 been imminently fair and have really honored your  
25 profession.

1 MR. GOODMAN: Well, that's very kind -

2 -

3 COUNCIL MEMBER WATSON: (Inaudible)

4 MR. JOHNSON: I agree.

5 MR. GOODMAN: Thank you all.

6 COUNCIL PRESIDENT COCKREL: And before  
7 we adjourn, a couple other items of business, and I  
8 know we have to do public comment before we adjourn.  
9 But Mr. Goodman, I think it would be useful,  
10 particularly for the benefit of the public, to  
11 outline what the next step in this process will be.  
12 We have completed the hearings, but I think it will  
13 be useful for the public -- members of the public  
14 that are here in the audience, as well as the viewing  
15 audience -- people that are going to be reading about  
16 this, or seeing something about it on television,  
17 given the level of media attention, to outline what  
18 the follow-up to the actual hearing phase will be.

19 MR. GOODMAN: We are waiting on -- Mr.  
20 President, on the returns on subpoenas, including the  
21 one to Mr. Johnson, and I will -- Mr. Johnson, I look  
22 forward to a return on that subpoena at some point --  
23 and others, and so there will be more information  
24 coming in. We have given our three quote "experts"  
25 some tasks for written submissions, and I think they

1 are all intending to do that rather promptly, and  
2 then -- excuse --

3 COUNCIL MEMBER WATSON: Mr. President,  
4 I just want to make comment -- the subpoenas; it just  
5 occurred to me -- I just received something  
6 (inaudible) something Mayor Kilpatrick said today  
7 about Council not working this week and next week and  
8 (inaudible) some pot shots at the -- this Council  
9 which could have demanded that he appear based on a  
10 subpoena (inaudible) not excuse appearances -- the  
11 time that has been allotted to the executive branch  
12 (inaudible) which is shown him more respect than he's  
13 shown us.

14 MR. GOODMAN: I will look for  
15 direction from Council on that point, but going to on  
16 to what -- what -- once -- once I receive the  
17 subpoenaed material, once I receive the reports from  
18 the experts, once I receive a transcript, which I  
19 gather is -- will hurry its way in our direction, I  
20 will -- with the help of my very trusty and  
21 trustworthy assistants and -- and colleagues here,  
22 attempt to start drafting a report and get that done  
23 promptly.

24 I would like -- I know that everybody  
25 wants to know how long that's going to take, but I'd

1 like a little bit of time to -- to think about that  
2 before I -- I make any promises. Originally, when  
3 you retained me, you asked me how long it take to  
4 come up with a plan (inaudible) a month and a half,  
5 and we almost -- it's been a little over two months,  
6 and we've completed the hearings, so I think we've  
7 done very well in terms of time --

8 COUNCIL PRESIDENT COCKREL: Certainly.  
9 Yes, Council Member Tinsley-Talabi?

10 COUNCIL MEMBER TINSLEY-TALABI: Thank  
11 you, sir. I too must take this opportunity to thank  
12 you, Mr. Goodman, and also your staff.

13 MR. GOODMAN: Thank you very much.

14 COUNCIL MEMBER TINSLEY-TALABI:  
15 (Inaudible) and Mr. Goodman, I just think it's so  
16 important, because I know just the history of what  
17 happens around here (inaudible) overshadow the good  
18 work and we never want that to happen, and it should  
19 not happen, and I would just like to say (inaudible)  
20 that we will have policies and procedures in place  
21 that will make certain -- that occurred will never  
22 occur again (inaudible) as we develop these policies  
23 and procedures so that this city can go forward, and  
24 not just this Council, but councils to come, will be  
25 better protected (inaudible) and I just think

1 (inaudible) keep your focus on why you were here to  
2 begin with, and do not be distracted.

3 MR. GOODMAN: I understand and will  
4 endeavor to do that. I think that -- response -- and  
5 thank you very much, Member Tinsley-Talabi. On -- on  
6 behalf of -- or in response to what Council Member  
7 Watson said about criticism coming in the direction  
8 of this body, I -- I would just again point out the -  
9 - the quotation that we started this out with, from  
10 that philosopher George Santayana, "Those who do not  
11 consider and think about and study the past --  
12 mistakes of the past, and bound to repeat them in the  
13 future" and I think that it was in that spirit that  
14 we proceeded and I think it -- it is a spirit that  
15 would behoove others as well.

16 COUNCIL PRESIDENT COCKREL: Well said.  
17 Well said. Council Member Jones?

18 COUNCIL MEMBER JONES: Thank you. Two  
19 things. First of all, I want to thank Mr. Goodman  
20 and his staff for a job well done, and also all of  
21 the witnesses that appeared that did not have to  
22 appear; I want to thank them, and thank you for  
23 putting together such a -- a well-prepared --

24 My question is to the President to  
25 Council Member Cockrel; you did have your budget out

1 at the finance management today --

2 COUNCIL MEMBER COCKREL: Yes.

3 COUNCIL MEMBER JONES: Eight-thirty, I  
4 believe.

5 COUNCIL MEMBER COCKREL: Yes, ma'am.

6 COUNCIL MEMBER JONES: And we did  
7 discuss some time, and just to get some type of  
8 clearance, didn't you ask for additional information  
9 --

10 COUNCIL MEMBER COCKREL: Oh, there's -  
11 - there's a number of -- of documents that are  
12 needed. Mr. Corley (inaudible) in which he indicated  
13 he did not recommend approval at this time  
14 (inaudible) whole series of documents that needed to  
15 be before us and initially reviewed by him.  
16 (Inaudible) three pages of questions, for example,  
17 looking (inaudible) pursuant to Public Act Seven of  
18 the State of Michigan (inaudible) linked to an inter-  
19 local agreement that (inaudible) person's never seen  
20 before signed by the DDOT director and the bus  
21 director in Windsor for a trial period neutral  
22 program about transfer -- bus transfers, and one of  
23 the things I'm very concerned about is how you could  
24 link the creation of a public transportation  
25 authority to an inter-local agreement between two

1 cities and two countries about bus transfers and a  
2 trial period.

3 I think there's some very real issues  
4 that the -- to be worked on. I do believe that the  
5 Mayor's office is going to be setting up something  
6 next week -- opportunity for our staff to meet with  
7 people engaged in the -- in the -- project to go over  
8 in a little more detail, the -- the specifics of it.  
9 (Inaudible) suggest that the Mayor's office wanted to  
10 give us bits and pieces, and that we (inaudible)  
11 inundated. Personally, I -- I think a transaction of  
12 this -- scale and dimension, we should have all of it  
13 prior to acting, and at some point we're going to  
14 need to --

15 MR. WHITAKER: I -- I'm sorry to  
16 interrupt, but we're still on the legislative hearing  
17 record. So I think we would officially end this so  
18 that she could stop transcribing.

19 COUNCIL MEMBER JONES: We're not on  
20 the public --

21 COUNCIL PRESIDENT COCKREL: Not yet.

22 Any other questions relative to the  
23 hearing issue? All right. That being the case, I  
24 think we can address any other issues before we go to  
25 public comments. I don't know if we want to continue

1 (inaudible) it's all be said, maybe we're just done  
2 on that.

3 COUNCIL MEMBER WATSON: Mr. President,  
4 I don't want to fully adjourn and conclude the  
5 hearing, until we have reached consensus on those  
6 witnesses who asked to be excused. Thank you, Mr.  
7 President.

8 COUNCIL PRESIDENT COCKREL: I'm not  
9 sure I understand that.

10 COUNCIL MEMBER WATSON: (Inaudible)

11 COUNCIL PRESIDENT COCKREL: Yeah, I --  
12 I would agree. I tend to agree also.

13 So, anything else on any other matter?

14 Seeing nothing else then, we're ready  
15 for public comment. Are there any members of the  
16 public who would like to address Council at this  
17 time?

18 MS. LACEY: Yes.

19 COUNCIL PRESIDENT COCKREL: All right;  
20 Ms. Lacey. And you come down here enough to know the  
21 routine. You may have two minutes.

22 MS. LACEY: Thank you. My name is  
23 Mary Lacey, precinct delegate and retired. My first  
24 information I want to tell you about the Martin  
25 Luther King -- benefit (inaudible) at 10:00 o'clock,

1 and that's to benefit (inaudible) give them a chance  
2 to go to China. And then my second thing is  
3 hopefully -- I know that Council -- but I want the  
4 audience to know that the State of Michigan have more  
5 -- elected representatives than any other state in  
6 the United States, including Texas and California.  
7 Hopefully, our elected officials will utilize  
8 (inaudible) for our youth, because years ago  
9 (inaudible) our parents didn't have this (inaudible)  
10 so like I say, Michigan has the most minority in  
11 elected officials (inaudible) and finally, I would  
12 like to address Council Alberta Tinsley-Talabi.  
13 (Inaudible) number 12 -- I had something (inaudible)  
14 and yesterday (inaudible) Detroit police (inaudible).

15 COUNCIL MEMBER TINSLEY-TALABI: Yes,  
16 ma'am.

17 MS. LACEY: Okay, thank you.

18 COUNCIL PRESIDENT COCKREL: All right.  
19 You're welcome. Any other members of public?

20 Seeing no other members of the public,  
21 the public comment period will be adjourned, and if  
22 there is nothing else to come before this honorable  
23 body a motion to adjourn --

24 COUNCIL MEMBER COCKREL: Move to  
25 adjourn.

1 COUNCIL PRESIDENT COCKREL: Is there  
2 support?

3 COUNCIL MEMBER JONES: Support.

4 COUNCIL PRESIDENT COCKREL: It's been  
5 moved and supported. I think this will -- maybe be  
6 the earliest we've gotten out since we've done these  
7 hearings --

8 COUNCIL MEMBER COCKREL: -- I also  
9 would like to say I think you have done an incredible  
10 job at --

11 COUNCIL PRESIDENT COCKREL: Thank you  
12 very much. Thank you very much colleagues.

13 Thank you very much, colleagues --

14 COUNCIL MEMBER COCKREL: Very, very  
15 good.

16 COUNCIL PRESIDENT COCKREL: -- and  
17 thanks to all of you in the public and thanks to all  
18 of you citizens who are watching, because you're the  
19 reason why we're here.

20 So, if there's nothing else to come  
21 before this honorable body, the meeting will stand  
22 adjourned.

23 (WHEREUPON, at 5:50 p.m., legislative  
24 hearing concluded)

25

1 STATE OF MICHIGAN)  
2 ) SS  
3 COUNTY OF OAKLAND)  
4

5 I HEREBY CERTIFY that this transcript, consisting of  
6 three hundred thirty-one (331) typewritten pages, is a  
7 complete, true, and correct record of the legislative  
8 hearing held on April 11, 2008.  
9

10 *Deanna L. Harrison*

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